

STAFF REPORT



PARKS AND RECREATION

DATE: August 22, 2023

TO: Justin Hess, City Manager

FROM: Marisa Garcia, Park, Recreation and Community Services Director
Jennifer Becker, Financial Services Director
By: Grace Coronado, Administrative Officer
Alisa DeHoyos, Purchasing Manager

SUBJECT: Request for Direction on the Request for Proposal Process for the Sublease, Management, and Operation of the Burbank Center Stage Facility

RECOMMENDATION

Direct staff to proceed with the Request for Proposal (RFP) process for the Sublease, Management, and Operation of the Burbank Center Stage (BCS) facility by commencing negotiations with the highest ranked proposer, Burbank Community YMCA.

BACKGROUND

The BCS facility, located at 555 North Third Street, was developed in conjunction with the Burbank Town Center Mall (Mall). As part of the master lease between the City and the developer of the Mall, the developer was required to devote a portion of the project for a community facility. In 1992, the City entered into a sublease agreement with the developer and the now abolished Redevelopment Agency, as part the master lease. The sublease provided the City rights to use the premises as a cultural facility, including cultural, educational, social, and recreational activities. The lease term was for 50 years, with four 10-year options with rent at \$1.00 per year. The City subsequently subleased the facility to the Los Angeles County Natural History Museum. However, due to low attendance, the Museum closed in 1996. Shortly thereafter, the Parks and Recreation Department (P&R) conducted a RFP for the re-use of the facility, which ultimately led to a decision to convert the former Museum site to a 276-seat performing arts facility. For reference, an RFP is a competitive solicitation process to generate interest in and receive proposals regarding the acquisition of goods and/or services pursuant to applicable Administrative Procedures.

BCS Facility Operating and Management Timeline – 2002 through 2023

In March of 2000 Council approved the Sublease Agreement and Master Lease Modification (“Sublease”) that provided for occupancy by the Colony Theatre Company (CTC). Pursuant to the Sublease, CTC was authorized to operate the facility in

accordance with a Theater Operating Agreement between the City and the Colony, which was executed concurrently with the Sublease.

The initial term of the Sublease was five years, from August 27, 2000 to August 27, 2005. In August 2005, the City approved a four-month extension through November 30, 2005 to allow the City and CTC time to negotiate a second five-year term. During this time, CTC made the City aware of their financial instability. Consequently, the City and the CTC agreed it would be prudent to only extend the agreement for 180 days, through May 31, 2006 to allow CTC to develop and implement a fundraising plan and reduce operational cost. Additionally, the City requested CTC develop a business plan to address both short- and long-term fiscal solvency. Due to the complexity of the process, a third contract extension was approved through November 2006.

Following extensive support from the City and prominent community business leaders, the City approved a five-year agreement from November 30, 2006 through November 30, 2011. Following the First Extension, CTC exercised, and the City approved, a second five-year extension, to extend the term of the Sublease through November 30, 2016. During the second extension, on or about February 2016, CTC informed the City that due to financial challenges, CTC was cancelling some scheduled productions.

On May 25, 2016, CTC requested to exercise its third and final five-year extension through November 30, 2021. In response to the request, the City determined that CTC was not in substantial compliance of the Agreement and denied the request for the five-year-extension. Although the Agreement expired November 30, 2016, the City granted a temporary extension to provide adequate time to review CTC's new proposed terms regarding an extension. As a result, an Interim Extension was executed to extend the Sublease term for a 30-day period from November 30, 2016 through December 30, 2016. Shortly after, a Third Extension was executed on December 30, 2016 for a one-year term beginning on December 31, 2016, and continued for a maximum one-year period, ending on December 31, 2017.

During the Third Extension of the Sublease which allowed CTC to continue subleasing the BCS facility, on March 7, 2017, Council approved the Amended and Restated Theater Operating Agreement which allowed CTC to operate the BCS facility under its new business model consisting primarily of third-party rentals for outside productions. Due to a variety of factors including CTC's on-going financial challenges to produce original plays, Council directed staff to solicit proposals, via a competitive RFP process, from organizations to operate and manage the BCS facility consistent with the permitted uses under the Master Lease between the City and the Mall, by providing educational, cultural, social, or recreational activities to the general public.

In response to CTC's on-going financial challenges and Council's direction to solicit proposals, on May 25, 2017, P&R released an RFP for the management of the BCS facility. The RFP was released and advertised publicly, seeking a qualified business, organization, or individual to sublease, manage, and operate the BCS. The entity would be responsible for day-to-day operations and maintenance of the facility.

Of the three proposals received, the Burbank Unified School District (BUSD) in partnership with the CTC, was evaluated as the highest ranked respondent and in

September 2017 negotiations commenced. During these negotiations, the City and BUSD failed to reach a successful negotiation for the City’s terms and conditions of the agreement, and in October 2017 BUSD withdrew from the process. Subsequently, CTC indicated they remained amenable to delivering the City’s requirements to manage and operate the facility. On December 21, 2017, a Fourth Extension was approved to the Sublease, extending CTC’s term for six months from January 2018 through June 30, 2018.

In January 2018, CTC submitted a formal proposal to continue managing and operating BCS. The City and CTC met in February 2018 to initiate discussion on the proposal with the intent to enter into a new multi-year agreement. However, in May 2018, the unexpected early transition of the DeBell Golf Course operator caused the City to shift priorities. Negotiations with CTC were deferred so staff could focus on sustaining golf operations and initiating the RFP process for DeBell Golf Course. As allowed in the Agreement, CTC operations continued on a month-to-month basis through September 9, 2022 when a new short term agreement through July 31, 2023 was executed.

Over the past several years the City has contemplated various facility management options, including: 1) P&R operating the facility; 2) negotiating a multi-year agreement with CTC; 3) negotiating a multi-year agreement with another interested party; or 4) conducting a new competitive solicitation. In late 2021, the City opted to move forward with a new competitive solicitation. The term for the City’s current short-term agreement with CTC expired on July 31, 2023, but continues on a month-to-month basis until a new agreement is established, whether with the incumbent or another operator.

It is the City’s general practice to conduct a competitive solicitation process upon the termination of operation and management agreements of its facilities, such as the DeBell Golf Course. Traditionally, the City enters into a five-year agreement, with the option for three, five-year extensions.

Key Dates

Table 1 below lists the RFP process steps, deadline dates initially published in the posted RFP, and any rescheduled deadline dates for reference and as described (and **bolded**) in the narrative that follows:

Table 1

	RFP Description	RFP Published Deadline Dates	Amended Deadline Dates
1	RFP released on PlanetBids	December 19, 2022	
2	Informational virtual meeting and tour	January 5, 2023	
3	Questions due on PlanetBids	January 13, 2023	January 20, 2023
4	Proposals Due	February 2, 2023	February 10, 2023
5	Finalist presentations for review panel (Round of Interviews)	February 27, 2023	March 30, 2023
6	Final Selection	By March 16, 2023	Pending
7	Contract Negotiations	March 2023	Pending
8	City Council approval and Contract signed	June 2023	Pending

DISCUSSION

City of Burbank RFP Process

When seeking to assess conditions in a current market, conducting a competitive solicitation, such as an RFP, is a common best practice in both the public and private sectors. An RFP is a tool that allows the City to equitably assess interested respondents' proposals, based on established selection criteria to evaluate and find the highest ranked respondent. With this RFP in particular, the City desired the flexibility to entertain various operational options, such as theaters/performing arts venues, museums, arts institutes and/or interactive galleries, and any other such uses or combination of uses for which respondents could demonstrate creativity, value and cultural benefit to the greater community. A competitive RFP process is in line with the City's fair and open competition standards. In the City's experience, healthy competition often results in transformational change, including enhanced and expanded services or differing program offerings for the community, whether with existing operators or new partners. One such example of a healthy and successful competitive process was at the DeBell Golf Course.

BCS RFP Process

Completion of the BCS RFP is a priority to staff, Council, and the community. To commence the development and drafting of the BCS RFP, staff worked alongside the City Attorney's Office and the Financial Services Department-Purchasing Division from August 2022 through December 2022. Thereafter, the **RFP was released on PlanetBids on December 19, 2022.**

Per the City's policy, the RFP solicited qualified businesses, non-profit organizations, and individuals with appropriate experience to submit proposals for the management and operation of the City's BCS Facility. It should be noted that contracts awarded as a result of a RFP are typically awarded on a best value basis, as defined in Chapter 2 of the Burbank Municipal Code (BMC), Section 2-2-101: "BEST VALUE: A value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the City and meeting the objectives of the project **or** a tradeoff between price and other factors specified in the solicitation."

The evaluation criteria established for selecting a firm under this proposed RFP, were as follows:

- a) Qualifications and Prior Experience of Proposer
- b) Proposed Use and Business Plan
- c) Business Plan Assumptions
- d) Proposed Rate
- e) Interviews of highest rated Proposer(s)
- f) Reference Checks

Informational Virtual Meeting and Tour

An informational virtual meeting and tour was held on January 5, 2023. Rather than bringing respective proposers to the facility, staff determined it would be more amenable to provide all proposers with the same knowledge of the facility that the incumbent, the CTC has. Staff reached out to the CTC representative requesting to film the facility for the

informational virtual meeting. This virtual tour allowed for fair and equitable access to the facility by allowing for greater participation by eliminating travel time for interested parties.

Question and Answer (Q&A) Period for Interested Respondents

The Q&A period for interested respondents was originally scheduled from the date of release through January 13, 2023. Questions were to be submitted through PlanetBids, the City's e-procurement platform. Due to the volume of questions received, **the Q&A submission deadline date was extended from January 13 to January 20, 2023**. The extension was a direct result of the requests for more time for questions to be submitted by proposers. Although only the parties who are submitting proposals are allowed to ask questions, extending the deadline date also allowed the Burbank Cultural Arts Commission members the courtesy of additional time to review the RFP. On January 3, 14, and 30, the Purchasing Division issued three separate Addendums. The additional time to submit questions subsequently impacted the proposal due date.

Proposals Due Date

The Proposals Due date was extended from February 2 to February 10, 2023, to accommodate the number of questions received and allow adequate time for proposers to incorporate updated information from the resultant addenda into their submitted proposals.

Four responses were received from the following proposers by the proposal submission deadline:

- After Hours Theatre Company,
- Burbank Community YMCA,
- The Colony Theatre Company, and
- The Greenhouse Arts & Media.

Following proposals submission, the responsible Buyer reviewed the proposals for responsiveness. This means that the Buyer verified all proposers met the RFP submittal requirements, listed on page 11, Section V. Proposal Structure, as well as Section V11. Selection Process (Attachment 1). Of the four proposals, After Hours Theatre Company was deemed non-responsive for failing to submit any financial statements. After Hours Theatre Company did not seek clarification on this requirement nor submit an inquiry about other acceptable means of demonstrating financial viability during the Q&A period.

Proposal Evaluation and Interviews

Throughout the RFP process, P&R has remained steadfastly committed to promoting Burbank as a regional arts destination, with the objective of preserving and enhancing theatre/performing arts venues in Burbank. Consequently, staff was thoughtful and strategic in selecting the Review Panel. The Review Panel consisted of six representatives, three theatre management subject-matter experts (with similar theater operations experience) from the cities of Brea, Beverly Hills, and Thousand Oaks, and three City staff from Community Development (Economic Development Division), P&R (Administration, Business Services and Facility Operations Division) and P&R (Community Services Division). The Review Panel was selected to promote fair and open competition, transparency, and impartiality.

After initial scoring of the written proposals, **respondent interviews were postponed from February 27 to March 30, 2023**. Because the proposal due date extension impacted the review panel’s availability, scheduling of interviews was postponed to accommodate all parties’ schedules.

All three responsive proposers were interviewed by the Review Panel on March 30, 2023.

The total scores resulting from evaluation of the proposals and the interview process are outlined in Table 2.

Table 2

Proposer	Score
Burbank Community YMCA	78.25
The Greenhouse Arts & Media	77
The Colony Theatre Company	61.08

Boards, Commissions, and Committees (BCC)

The City’s BCCs each have a unique set of duties and responsibilities. BCCs broadly provide greater community participation and input into local government while facilitating quality decisions by the Council. They also provide additional lines of communication between the public and Council to ensure City government responsiveness. BCCs can provide input and make recommendations to Council, but they do not determine or establish City policy or administrative direction. Additionally, BCCs serve in an advisory capacity with many having limited decision-making authority.

Understanding the role of the Burbank Cultural Arts Commission (Commission) or the Parks and Recreation Board (Board), P&R staff did not request input from the Commission or Board prior to releasing the BCS RFP. Due to their active participation and well-connectedness in the community, BCC members can also introduce impartiality or influence into the process based on their direct financial interest or involvement with proposers. In fact, staff was aware of personal and/or professional relationships between Commission members and at least two proposers, the Burbank Community YMCA and the CTC. Despite the City’s care to avoid conflicts¹, early in the RFP process, members of the Commission declared their concern with not being consulted regarding the RFP prior to its release, expressed a strong desire to participate on the Review Panel and publicly requested that BCS continue to be a facility where only performing arts be programmed.

P&R values the Commission’s mission in celebrating diversity in arts and media in the community and promoting Burbank as a vibrant and enticing regional arts center. Understanding the Commission’s mission and on-going advocacy for preserving and enhancing theatre/performing arts venues in the community, P&R has been committed to representing the Commission throughout the competitive process and aligns

¹ A conflict of interest is defined as “a situation that gives a person, while acting in their official capacity, the opportunity through actions or decisions to direct or influence an outcome for personal benefit.” (Source: NIGP, The Institute for Public Procurement, Public Procurement Dictionary of Terms, 2022 edition.) As defined in Section 1210. Illegal and Void Contracts in the Burbank City Charter, any officer or employee attempting to influence decisions through such means is expressly prohibited and can result in a misdemeanor charge.

with the Commission in the City's vision to continue to operate the facility as a vibrant center for cultural, educational, social, and recreational activity benefitting the entire community. However, to ensure the City's commitment to a fair, open, and impartial process, staff could not accommodate the request for the Commission's participation on the Review Panel.

Anomalies during the Evaluation Process

Throughout the competitive solicitation, staff received continuous feedback, concerns, and inquiries from the Commission, and inquiries directly to and from Council members. More specifically, members of Council asked staff for updates regarding the status of the RFP process and shared comments of frustration they had received from Commission and community members. Respectfully, City staff assured Council that the City is committed to a fair, transparent and impartial process, and explained that what ensures impartiality is withholding the identity of the evaluators and keeping the evaluation process in confidence while it is ongoing to maintain the integrity of the process itself. Maintaining confidentiality during this process has been challenged and successfully defended by public agencies up to the California Supreme Court. (See *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.)

Staff also advised that Council may continue to receive direct or indirect input from the community regarding this RFP process, and to ensure that the integrity of the RFP process is maintained, it is best that Council not further engage and direct any input or inquiries to staff. As a best practice, “*a public official should maintain an ‘arm’s length’ distance from any elements of the procurement process not formally required of the official... Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety. The public expects that public officials will serve only the public interest, refraining from anything that enhances or appears to enhance self-interest.” (*Source: *The Public Procurement Guide for Elected and Senior Government Officials*, published by NIGP, the Institute for Public Procurement, © 2016).

P&R staff provided brief RFP process updates to the Commission at their regularly scheduled meetings on April 13, 2023, June 8, 2023, and August 10, 2023, and to the Council at the regularly scheduled meeting on June 13, 2023. However, it is not best practice to discuss details or status of an evaluation during an RFP process until the evaluation has been completed.

Proposed 2nd Round Interviews

Throughout the RFP process and as outlined in the RFP, the City's intent was the “Selection of one (1) proposal from among all Proposers with the highest point total will be selected to start the negotiation process. The selection will be based on the experience and qualifications (both in general and more specifically as it relates to management and operations).” Because staff was committed to completing a thorough RFP process, staff thoughtfully considered concerns from the Commission and Council Members and determined that a non-scored second round of interviews, conducted by members of executive staff, would allow management to gain a full understanding of the proposals prior to negotiations, and to clarify any questions they may have, since management did not participate in the first-round interviews.

Accordingly, a second round of interviews was scheduled in July 2023 pursuant to page 19 of the RFP, Section VIII. RFP Terms and Conditions, paragraph 3d., which expressly provides the City may “modify or suspend any and all aspects of the selection process, modify the scope of the project or the required responses, or modify the selection process and/or evaluation criteria indicated in this RFP.” Staff intended to present any proposed contract to the Commission and the Board for advisory purposes prior to award recommendation to Council. While these steps further delayed results of the evaluation of received proposals and the interview process, after many inquiries staff hoped to put any unease about the selection process to rest and demonstrate its commitment to a thorough process.

While the proposed second round of interviews was pending, the City became aware of various external communications, including social media discussions and local press coverage by a member of the Commission and a proposer, pertaining to the RFP process. These communications, while indicative of the community's passion for the arts, raised new concerns about maintaining the integrity, impartiality, and objectivity of continuing the evaluation process. Considering these circumstances, the City Manager, in consultation with P&R staff and the Purchasing Manager, decided to cancel the second round of interviews and seek guidance and direction from the Council. On July 12, 2023, the City suspended the RFP process and notified all proposers.

RFP Process Next Step Options

Traditionally, P&R would commence contract negotiations with the highest ranked proposer, the Burbank Community YMCA. However, because the process was halted and proposals have now passed the proposal validity period of ninety (90) consecutive calendar days, staff is seeking Council direction on how to proceed with the RFP process.

Below are the three options for Council consideration. Staff recommends Option 1:

Option 1: Commence negotiations with the highest ranked proposer, Burbank Community YMCA.

This option allows the City to make an offer of award following the original intent of the RFP and based on the impartial evaluation completed by the carefully selected Review Panel. It allows the City to enter negotiations to complete contract execution. Option 1 honors the RFP process already completed. However, there will be an operational impact anywhere from three to six months due to transitioning services from the incumbent to the Burbank Community YMCA.

Option 2: Cancel the current RFP process and begin a new updated RFP process.

This option allows the City to begin a new process with transparency about the closed process, with clear guidelines regarding attempted external influences. It could also allow staff the option to solicit community feedback related to the use of facility outside of an RFP open solicitation period. However, this option would prolong the timeline for award of a contract for the facility's operations and may discourage existing responsive proposers from re-submitting a proposal.

Option 3: Select one of the other two qualified proposers and direct staff to commence negotiations.

This option allows for the option of continuity should Council select the incumbent, and like Option 1 allows immediate commencement of contract negotiations. However, Council would need to override the Review Panel's scoring and may encourage similar disruptive behavior on other procurement processes in the future. This Option also deviates from the best practice in a competitive and fair market assessment process.

Though staff has been thoughtful throughout the RFP process, in retrospect, staff could have solicited feedback on the needs and desires of the greater Burbank community in an open forum prior to issuing the RFP or holding the Review Panel. As P&R moves forward with RFPs, P&R will solicit input from the respective BCCs and community, as appropriate. Staff acknowledges the initial lack of communication prior to issuance.

ENVIRONMENTAL IMPACT

This activity involves administering an RFP for the Management, and Operation of the BCS facility and has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and as such, is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

FISCAL IMPACT

There is no fiscal impact associated with this report. The fiscal impact is unknown until a proposer is selected and brought back to Council for approval at a later date.

CONCLUSION

Staff recommends Council direct staff to commence negotiations with the highest ranked proposer, Burbank Community YMCA. Alternatively, Council may consider two other options:

- Cancel the current RFP process and begin a new, updated RFP process.
- Select one of the two other qualified proposers and direct staff to commence negotiations.

By engaging the City Council in the decision-making process in an open forum, the City is reaffirming its commitment to transparency and impartiality. Staff seeks Council direction on how to proceed with the RFP process to ensure that the future management and operations of the cherished BCS aligns with the collective vision of the community.

ATTACHMENT

ATTACHMENT 1 – Burbank Center Stage RFP

ATTACHMENT 1



**PARKS AND
RECREATION**

**City of Burbank
Parks and Recreation Department**

RFP No. PR2023-45025-1019
REQUEST FOR PROPOSALS
FOR
SUBLEASE, MANAGEMENT AND OPERATION OF
THE BURBANK CENTER STAGE

Proposals must be received by:

February 2, 2023
2:00 p.m.

City of Burbank
Financial Services Department - Purchasing Office
301 East Olive Avenue, Suite 305
Burbank, California 91502
Attention:
Grace Coronado
Administrative Officer

**REQUEST FOR PROPOSALS
FOR
SUBLEASE, MANAGEMENT AND OPERATION OF THE BURBANK CENTER STAGE**

Dear Proposers:

Thank you for considering the attached Request for Proposals (RFP). If you are interested in submitting a proposal, please follow these instructions for submissions.

Qualified businesses, non-profit organizations, and individuals with appropriate experience are invited to submit proposals to manage and operate the City of Burbank's (City) Burbank Center Stage ("Facility"), located in the Burbank Town Center Mall, at 555 North Third Street, Burbank, California 91502. The Facility is a vibrant center for a variety of educational, cultural, social and recreational activities. It offers opportunities for civic and community engagement and has the potential to not only increase the quality of life and community cohesion in Burbank, but also serve as a catalyst for local economic activity and development. The selected Proposer ("Operator") will enter into a sublease and operating agreement for the Facility to manage, direct, promote, and operate programs and events in the Facility. All day-to-day operations and maintenance of the Facility will also be the responsibility of the Operator. The City is open to allowing a wide variety of educational, cultural, social or recreational programming for the public to enhance the overall experience for its residents and surrounding communities. Proposals may include construction and capital investment plans for the Facility if necessary for the Operator's proposed use.

The sublease is intended as a "four-wall" sublease agreement, i.e. the Facility will be offered with permanent fixtures only, and the Operator will be responsible for monthly rental fees payable to the City. All existing temporary fixtures and equipment such as lighting, sound equipment, etc. may be removed by the current tenant at the end of their sublease, which expires on July 31, 2023.

The City must be able track Proposers in the event an addendum is issued. Only RFP documents downloaded from PlanetBids at:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=14210> shall be considered official. Failure to register and download the RFP document and any addendum from the website will result in disqualification of the proposal. Proposals shall be reviewed and rated based on the qualifications of the Proposer, the Proposer's business and operating plans for the Facility, and the proposed financial terms.

Consideration will be given to Proposers that can financially support modernizing the facility including on-going maintenance and long-term repair costs in addition to other obligations of a sublease (including negotiated rent) without the need for City financial support.

Any costs incurred in the preparation of a proposal, presentation to the City, travel in conjunction with such presentations, shall be the responsibility of the Proposer. The City assumes no responsibility and no liability for costs incurred by Proposers prior to final approval and execution of an agreement.

The Proposer shall furnish the City with such additional information as the City may reasonably require. The City reserves the right to conduct pre-agreement negotiations with any or all Proposers.

Any questions or requests for clarification must be submitted electronically via PlanetBids: <https://www.planetbids.com/portal/portal.cfm?CompanyID=14210>. No additional information or bid amendments will be accepted later than February 2, 2023 at 2:00 p.m.

All data, documents and other products used or developed during the RFP process will remain the property of the City upon completion of the RFP process.

In addition to submission at PlanetBids, one (1) original and five (5) copies of completed proposals must be enclosed in a sealed package, clearly marked on the outside of the package: "Sublease, Management and Operation of the Burbank Center Stage: RFP No. PR20123-45025-1019." The original proposal must be unbound. Proposer's Financial Information and Proposed Financial Terms shall be submitted in a separate sealed envelope marked on the outside, "Confidential, RFP PR2023-45025-1019, (company name)." The financial statement envelope shall be placed inside the larger sealed package. One (1) digital copy of the completed proposal (in PDF format) on a USB drive must also be placed inside the larger sealed package.

Sincerely,

Grace Coronado
Administrative Officer

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**REQUEST FOR PROPOSALS
FOR
SUBLEASE, MANAGEMENT AND OPERATION OF THE BURBANK CENTER STAGE**

I. PROPOSAL SUBMITTAL

1. Proposals shall be submitted in a sealed package with the following information clearly marked on the outside of the package: **“Sublease, Management and Operation of Burbank Center Stage: RFP No. PR2023-45025-1019.”**
2. **Financial statements shall be submitted in a separate sealed envelope** marked on the outside: **“Confidential, RFP No. PR2023-45025-1019, (company name).”** The financial statement envelope shall be placed inside the larger sealed package. Financial statements shall include documents identified in Section V, subsections (6-8), Proposal Structure:
 - a. Qualifications – Proposer’s Financial Information
 - b. Financial Statement and Proposed Financial Terms
3. **In addition to submission on PlanetBids, one (1) original and five (5) copies of the proposal must be submitted in hard copy.**
 - a) The original proposal must be unbound.
 - b) Copies of submittals shall be printed on plain white, size 8.5” x 11” paper and should be bound, if necessary, in a simple plastic binding or stapled.
 - c) Folded 11” x 17” sheets for any maps or diagrams are permitted and may be attached.
 - d) The proposal shall be signed by the individual or company official with the power to bind the company in its proposal.
4. **One (1) digital copy** of the proposal and all attachments must be submitted (in PDF format) on a USB drive, which shall be placed inside the larger sealed package.
5. Proposals must be submitted by US Postal Mail or courier, or hand delivered to:

**City of Burbank
Financial Services Department - Purchasing Division
Attention: Grace Coronado
Administrative Services Building
301 East Olive Avenue, Suite 305
Burbank, California 91502**

- a) Failure to comply with the requirements of the RFP may result in disqualification. The City is not responsible for finding, correcting, or seeking correction of any errors or ambiguities in proposals. Errors and ambiguities may result in a proposal

receiving a lower score during the evaluation process. The City reserves the right to disqualify a proposal with mathematical errors, gross clerical errors, inconsistencies, or missing information which prevents the proposal from being fully evaluated. The City may, at its discretion, seek clarification regarding information contained in a proposal. Any errors or ambiguities contained in proposals shall be interpreted in favor of the City.

- b) The City reserves the right to reject any or all proposals, to waive any informality in any proposal, and to select the proposal that best meets the City’s needs.
- c) Proposals or modifications to proposals received after February 2, 2023 at 2:00 p.m. shall not be considered.
- d) Emails or facsimile submittals will not be accepted.

ALL ORIGINAL AND COPIES OF PROPOSALS MUST BE RECEIVED BY 2:00 PM ON FEBRUARY 2, 2023

6. Estimated RFP Timeline

Description	Deadline Date
RFP released on PlanetBids	December 19, 2022
Informational virtual meeting and tour*	January 5, 2023 at 10:00 a.m.
Questions due on PlanetBids	January 13, 2023 at 5:00 p.m.
Addenda issued if needed	January 19, 2023
Proposals Due	February 2, 2023 by 2:00 p.m.
Finalist presentations for review panel	Week of February 27, 2023
Final selection	By March 16, 2023
Contract negotiations	March 2023
City Council approval and Contract signed	June 2023

* Virtual informational meeting is not mandatory. The virtual meeting will be held via zoom and the link will be posted on PlanetBids.

II. BACKGROUND

The City of Burbank is an urban community located in the heart of Los Angeles County, 12 miles from downtown Los Angeles, and adjacent to the cities of Glendale and Pasadena. There are approximately 12,400 businesses and public agencies located within Burbank which provide approximately 142,000 jobs. The City covers 17.2 square miles. Burbank is the 15th largest city in Los Angeles County, with a population of almost 105,000.

The City provides full services to its residents and businesses including: police, fire, parks, library, animal control and shelter services, water, electric, water reclamation, refuse and landfill, golf, paramedics and other ancillary services. The City's Parks and Recreation Department is responsible for providing well-maintained recreational facilities, which accommodate a variety of programs and activities that are designed to meet the educational, cultural, social and recreational needs of the Burbank community.

In 1992, the City entered into a sublease ("Master Lease") with the then-existing Burbank Town Center Mall ("Mall") developers for use of a portion of the Mall as a community facility for the City. The portion of the Mall that is leased to the City is located at 555 North Third Street, on the corner of North Third Street and Cypress Avenue ("Facility"). The term of the Master Lease will expire on or before November 14, 2044.

From 1992-1996, the Facility was operated by the Los Angeles County Natural History Museum as a satellite of the Museum. However, a condition of the Master Lease was that if the Museum stopped operating the Facility, the City must use the Facility for the operation of a Facility which provides "educational, cultural, social and recreational activities to the general public."

In 1996, the City allocated funds to convert the Facility into Burbank Center Stage, a state-of-the-art performing arts facility. The City spent approximately \$1M to convert the Facility into the Burbank Center Stage facility including demolition, construction of walls, flooring, stage and seating risers, and improvements to the restrooms, electrical, fire sprinkler, and HVAC systems. In 2000, the City entered into a sublease and operating agreement with the Colony Theatre Company ("CTC"), a non-profit theater company, to present their annual season of theater productions at the Facility and to sublease, manage and operate the Facility. In 2022, the City executed a new sublease and operating agreement with CTC. The website <http://www.colonytheatre.org> provides current program information. The City's sublease and operating agreement with CTC expires on July 31, 2023.

The Facility consists of the following:

1. PERFORMANCE SPACES

- a) Mainstage theater: capacity 266, stadium seating with classic red velvet theater chairs, balconies on both sides of the stage; thrust stage 22'7" D x 37' W, with 21' to grid.
- b) Rehearsal studio / multi-use space with a private entrance and private restroom (located upstairs): capacity 60, floor area 27' x 40'.

2. FRONT OF HOUSE SPACES

- a) Lobby and Art Gallery suitable for small events, receptions, parties, art shows, etc.
- b) Box Office area
- c) Concessions and bar area
- d) Public restroom facilities

3. BACK OF HOUSE / BACKSTAGE SPACES

- a) Back of house crossover
- b) Two (2) dressing rooms with private restrooms
- c) One (1) green room
- d) Loading zone with access from Third Street

4. PRODUCTION and ADMINISTRATIVE SPACES

- a) Technical booth that spans the rear of the mainstage theatre
- b) Production office (suitable for small meetings): capacity 6 people
- c) Administrative office, suitable for 4-6 people.

5. BUILDING and SITE SPECIFICATIONS

- a) Central air and heat throughout the building
- b) Free parking available in the Burbank Town Center Mall garage(s). The closest parking structure is the Burbank Town Center east garage, with a direct entrance into the lobby from Level 4.
- c) A local area map showing the location of the Facility, as well as Facility photos and floor plans are included in Exhibits A, B, C, and D.

III. SERVICE SOLICITED

The City seeks qualified Proposers to sublease, operate and manage the Facility consistent with the terms of the Master Lease by providing educational, cultural, social or recreational activities to the general public. Although the current programming for the Facility is live theater, other proposed uses of the Facility may be considered provided that programming fulfils the provisions outlined above and in the Master Lease.

The selected Operator will be required to manage and operate the Facility including, but not be limited to, the following:

1. SCHEDULING

- a) Provide regularly-scheduled educational, cultural, social and/or recreational programming for the general public.
- b) Be flexible to modify the schedule of events based on community response, demographics, and affordable pricing based on local entertainment trends.

2. MARKETING and CUSTOMER SERVICE

- a) Provide first class customer service to all Facility visitors, audiences, and rental clients (as applicable).
- b) Establish pricing levels for all proposed programming including in-house events and third-party rentals (as applicable).
- c) Establish, maintain, and pay for the Facility telephone and website, with up-to-date information about the Facility programs and events, contact information, access instructions, etc.
- d) If applicable, maintain consistent online commerce and weekly box office hours of operation to accommodate Facility walk-ups, phone calls, and meetings that may arise.

3. MANAGEMENT

- a) Establish formal policies and procedures for management and operation of the Facility in full compliance with all applicable laws, regulations, and policies.
- b) If desired, operate a souvenir store and/or refreshment services for Facility visitors subject to compliance with all applicable laws, regulations, and policies. No hot food may be prepared or served at the Facility with the exception of external catering services.
 - i. Operator may at their own expense, apply for and obtain applicable state and local permits to serve alcoholic beverages to Facility visitors subject to compliance with all applicable laws, regulations, and policies.

4. BUDGETING and REPORTING

- a) Obtain and pay for all taxes, permits, licenses, etc. associated with Facility operations. If the selected Operator has **NOT** received property tax-exempt status from the Los Angeles County Office of the Assessor, the Operator will be responsible for paying all real estate and other ad valorem taxes and assessments of any kind, with respect to all land, buildings and improvements located at the Facility.
- b) Pay all utility invoices in a timely manner.
- c) Prepare and submit to the City at least sixty (60) days before the beginning of each fiscal year:
 - i. Draft calendar of events and/or programming for the upcoming year, and

- ii. Projected operating budget for the Facility on a monthly basis.
- d) Prepare, and submit to the City within sixty (60) days of the each Tenant Fiscal Year:
 - i. Annual audited statements of the Gross Revenues and Percentage Rent, for the preceding fiscal year prepared by an independent Certified Public Accountant and once within 30 days following the expiration of this Lease, and a
 - ii. Program Report, summarizing the number of events hosted and total attendance figures.
- e) Meet all financial reporting obligations as required by local, state or federal law.
- f) Attend annual meeting with City staff to review operations of the Facility.

5. PERSONNEL

- a) Designate one (1) individual who will be responsible for ensuring Operator remains in compliance with the City sublease. This person will serve as Operator's primary liaison with the City concerning all administrative issues, such as preparation and submission of required data and reports, and will attend all meetings with the City, as needed.
- b) Establish and maintain personnel policies in compliance with all applicable laws.

6. MAINTENANCE

- a) Perform all interior Facility maintenance, repairs and replacements (both capital and non-capital), and cleaning services to ensure that the Facility and the immediate surroundings are kept in a safe, neat, clean, and first-class condition at all times, and that the Facility is in such condition as to comply with all applicable laws as well as health and safety regulations. Notwithstanding the foregoing, the City will be responsible for maintaining certain building infrastructure including air conditioning and heating, elevator, pipes and conduit serving the Facility.
- b) Ensure daily trash removal from all interior areas of the Facility.
- c) Conduct an inventory of all affixed property within six (6) months of the signing a sublease with the City, and thereafter, inventory submit to the City an updated inventory every two years.
- d) 12 months after the Effective Date, and each 12 months thereafter, City will physically inspect Premises as for compliance with the sublease. City will provide Operator 24 hours' notice before any such inspection. Subsequent to each inspection, Operator and City will meet to discuss the results of the inspection as well as any other ongoing issues. Additional meetings may be called by either party at any time.

7. COMPLIANCE WITH MASTER LEASE

- a) The selected Operator will be required to assume and perform all obligations of the City of Burbank as "Tenant" in the Master Lease (attached as Exhibit G to the Sample Sublease) as if it were the "Tenant" thereunder, except as may be provided in this RFP and the final negotiated sublease.

IV. CONTRACTUAL AND FINANCIAL TERMS

The selected Operator will be required to enter into a sublease with the City for an initial period up to five-years (5), commencing on or about August 1, 2023, which may be extended by request of Operator at the mutual agreement of the City. The sublease will be in form and substance substantially similar to the proposed Sublease and Operating Agreement, attached as Exhibit G. At the City's sole discretion, any extension of the five-year term will be contingent upon the Operator's continuing compliance with the sublease, all applicable federal, state, and local government laws and regulations, and an evaluation of Operator's performance. The initial term of the sublease may be negotiated depending on proposed capital investments in the Facility by the Proposer.

Proposers must include in their proposal monthly rental fees payable to the City for the use of the Facility. The City expects such proposals to give important consideration to revenue sharing with the City. Such proposed monthly rental fees should include provisions for payment of base rent to the City as well as revenue participation with the City in exchange for Proposer's use of the Facility. The final rate will be negotiated and confirmed during contract negotiations with the selected Operator and will remain valid for the initial agreement term. The rate may be subject to renegotiation prior to any agreement extension. Monthly fees will not be subject to offset for any reason.

V. PROPOSAL STRUCTURE

The proposal shall include, at a minimum, the following information:

1. Cover Letter

Provide a cover letter describing the Proposer, the name and address of the entity submitting the proposal, and the name, address, telephone number, and email of the person or persons who will serve as the Proposer's principal contact person authorized to make representations on behalf of the Proposer. The letter must bear the signature of the person having proper legal authority to make the proposal for the entity.

2. Table of Contents

Provide a table of contents listing the individual sections of the proposal and their corresponding page numbers.

3. Executive Summary

Provide a 1-2 page overview of the entire proposal describing the most important elements of the proposal and summarize key benefits of the proposal for the Burbank community, including but not limited to how the proposed use will provide educational, cultural, social, or recreational activities to the general public.

4. Qualifications – Proposer Identification

Provide the following information:

- a) Identification and type of legal entity which would contract with the City to sublease, manage and operate the Facility, as follows:
 - i. Organization/Proposer Legal name and address
 - ii. EIN – IRS issued Employer Identification Number
 - iii. Year established
 - iv. Legal form of company (partnership, corporation, nonprofit, etc.) and years in business. Include documentation showing all members or partners in the company structure.
 - Proof of good standing with the California Secretary of State
 - If tax-exempt, proof of federal, state, and/or local tax-exempt status, including any determination/verification by the Los Angeles County Office of the Assessor of property tax-exempt status
 - v. If Proposer is a wholly-owned subsidiary of a parent company, provide the legal name and form of the parent company.
 - vi. Official website, if available
 - vii. Social Media accounts (as available) – Facebook, Twitter, Instagram, etc.
 - viii. Mission Statement, if available
 - ix. Vision Statement, if available
- b) Identification of any possible conflicts of interests; past or pending litigation with the City or any other public or private entity; and any past or pending civil or criminal investigations, including any past or pending litigation related to the Burbank Center Stage, ONNI BURBANK TOWN CENTER LLC, CAPREF Burbank LLC, or the Burbank Town Center.
- c) Previous Contracts with City - The Proposer shall submit a list of any project contract awards or amendments awarded by the City to the Proposer in the last three (3) years. The list shall include a short description of the project, brief summary of the project scope of work, award date, completion date, City project manager, and contract value.

5. Qualifications – Proposer’s Previous Operating Experience

Briefly describe:

- a) Any relevant experience working with public entities on a rental agreement basis.
- b) Any relevant experience operating and managing a similar facility. For each facility, please provide:
 - i. Location, site plan, and photographs;

- ii. Facility dimensions, size/capacity, and amenities;
- iii. Rental timeline/length of agreement and any contract extensions;
- iv. Rental fees payable;
- v. Description of the most recent annual schedule of events, including dates when such schedule was in effect;
- vi. Annual attendance/visitors at the facility during the last three (3) years that Proposer operated/managed the facility;
- vii. General description of the environment in which the facility operated, such as population size, demographic characteristics, competitive environment, etc.;
- viii. Operating plan including key operating features, such as: Operating budget (revenues and expenses) during the last three (3) years that Proposer managed/operated the facility;
- ix. Copy of land use agreement (lease or other) if applicable;
- x. Management/owner and landlord/public agency contact (if applicable) of the facility during Proposer's operation/management of the facility.

6. Qualifications – Proposer's Governance Information and Key Leadership

Provide the following:

- a) Proposer's highest ranking paid employee (CEO, Executive Director, etc.). Provide full name, title, telephone number, email address, date when started in current role (month and year), and brief description of professional background.
- b) Proposer's Board Chair, if applicable. Provide full name, title, telephone number, email address, date when started in current role (month and year), and brief description of professional background.
- c) If applicable, provide a listing of all Board Members including a brief description of their areas or professional expertise, whether current or retired (e.g. law, accounting, health care, academic, etc.).
- d) If applicable, provide a listing of all Board Committees.

7. Qualifications – Proposer's Financial Information

Provide the following where relevant:

- a) One (1) copy of CPA firm-audited (or CPA firm-reviewed) annual financial statements for the Proposer's most recent fiscal year and two (2) previous years;
- b) Tax returns (or Schedule C if a sole proprietorship) for the most recent fiscal year and two (2) previous years. Please redact any personal information such as a social security number, etc.
- c) Form 990 (if tax-exempt) for the most recent fiscal year and two (2) previous years.
- d) Summary of operating revenues and expenses in the most recent fiscal year and two (2) previous years, broken out per revenue and expense area.

If total operating expenses exceeded total revenue in any of the last three (3) years, explain the reason for the deficit, indicate the size of any endowment, and steps taken to address the shortfall.

- e) State whether the Proposer has filed for bankruptcy in the last ten (10) years and provide any other relevant financial information.

Proposer's Financial Information shall be submitted in a separate sealed envelope marked on the outside: "**Confidential, RFP No. PR2023-45025-1019, (company name).**" The financial statement envelope shall be placed inside the larger sealed package. Failure to provide this information shall result in proposal disqualification.

8. Financial Statement and Proposed Financial Terms

Specify key financial components of the proposal related to the management and operation of the Facility. This should include proposed monthly rental fee or other revenue sharing terms with the City, cost and revenue projections, and the Proposer's financing strategy. At a minimum, this should include the following:

- a) The proposed rent, including base rent, participation rent, proposed escalations, rent features, revenue sharing, and/or other significant features of the sublease. The final rental fee or financial arrangement with the City will be negotiated and confirmed during contract negotiations with the selected Operator and will remain valid for the initial contract term of five (5) years. The rate may be subject to renegotiation prior to any contract extension.
- b) Provide detailed operating revenue and expense estimates for the first five (5) years of operation.
- c) An overview of the financing and/or fundraising plan to support Facility operations in the first five (5) years of operation (limit 500 words or less), including:
 - i. Anticipated income from admissions
 - ii. Anticipated income from community/civic group rentals, if applicable
 - iii. Anticipated income from private/commercial rentals, if applicable
 - iv. Anticipated Board giving, if applicable
 - v. Estimated donations from individuals, corporations, and foundations, if applicable
 - vi. Brief outline of any anticipated fundraising events, galas, etc., if applicable
- d) If applicable, include a brief description of and rationale for any initial or future capital investment, facility alterations, or building improvements the Proposer would make within the first five (5) years of operations to reflect the needs of the proposed programming and Facility usage, including estimated capital costs and strategies for financing (limit 500 words or less).

Proposer's Financial Statement and Proposed Financial Terms shall be submitted in a separate sealed envelope marked on the outside: "**Confidential, RFP No. PR2023-45025-1019, (company name).**" The financial statement envelope shall be placed inside the larger sealed package. Failure to provide this information shall result in proposal disqualification.

9. Proposed Business Plan

Outline a preliminary Business Plan for the Facility, and how Proposer will provide educational, cultural, social and recreational activities to the general public. Business Plan should include, at a minimum, the following:

- a) A summary business statement including the Proposer's vision for the Facility for the next 5 years and the next 10-15 years (limit 400 words or less).
- b) Anticipated calendar of events in the first five (5) years of operation. For a sample table see Exhibit E.
- c) Description of anticipated local partnerships, if applicable (artistic, co-production, community partnerships, etc.), including a brief statement of support from each potential partner (limit 250 words or less per partner), with full name, title, and contact details (telephone and email).
- d) Brief description of target visitor profile based on proposed programming.
- e) Estimated total attendance levels in the first five (5) years of operation. For a sample table see Exhibit F.
- f) Estimated admission price levels for programming (if applicable).
- g) Estimated rental fees for community/civic group rentals and private/commercial rentals (if applicable).
- h) General staffing and security plan, including a basic organizational chart and a brief outline of duties and responsibilities.
- i) Anticipated governance and/or Board structure if applicable, including a brief statement on the Proposer's strategy for cultivating new Board members (limit 250 words or less).
- j) A description of the concessions and services that would be offered at the Facility, if any.
- k) Statement on Facility maintenance plan and quality standards.
- l) Overview of the Marketing Plan for the Facility (limit 500 words or less), including any Public Relations and/or (re)branding plans as applicable

10. Assumptions

Please provide details of your analysis that support your assumptions in your proposed business plan, such as attendance levels, admission price levels, anticipated number of rentals, etc. Provide supporting documentation at the end of your Proposal as appropriate. The analysis/supporting documentation may include, but is not limited to:

- a) Benchmarking of similar venues in the Los Angeles metropolitan area, their programming, admission prices and/or rental fees and average annual attendance.
- b) Analysis of market demand for the proposed schedule of events/rentals.
- c) Details and results of any preliminary discussions with potential program partners, co-producers or co-promoters for mainstage events and performances and/or for educational and community programs in the Facility.
- d) If the Proposer anticipates any Facility alterations in the first five (5) years of operation, provide details of any analysis conducted to support the projected capital costs.

11. Sublease and Operating Agreement

Specify all proposed exceptions/modifications to the proposed Sublease and Operating Agreement between the selected Operator and the City, a copy of which is provided in Exhibit G. If proposing exceptions/modifications, Proposer must include the following:

- a) A red-lined version of the Sublease and Operating Agreement that clearly tracks all proposed changes (additions, deletions, modified language, or new provisions), and
- b) Written documentation providing an explanation/rationale for each individual change proposed, including both the rationale for proposing the change and the proposed benefit to the City for accepting the change.

VI. PROPOSAL EXECUTION

The proposal shall be signed by an official authorized to bind the Proposer, and shall contain a statement to the effect that the proposal is valid for ninety (90) consecutive calendar days. However, the City reserves the right in its discretion to request an extension of the validity period from some, all, or no Proposers.

The proposal must be signed in blue ink, with the address of the Proposer's entity provided. Evidence of the legal status of the Proposer's entity, whether individual, partnership, corporation, limited liability company or otherwise, shall also be provided.

VII. SELECTION PROCESS

1. Evaluation Criteria

All proposals will be evaluated by the Review Panel in accordance with the criteria and procedures identified below. Without limiting any of its rights described herein, the City reserves the right, in its discretion, to make a selection based directly on the proposals submitted or to negotiate further with one or more of the respondents. The respondent

selected under this RFP will be chosen on the basis of its apparent ability to best meet the overall objectives of the City, as determined in the City's sole and absolute discretion.

2. Phase 1 Evaluation

Proposals will be evaluated by the Review Panel on a scale of 50 points. The weighted criteria listed below will be employed in assessing the merits of each proposal. The subcategories listed describe some but not all the criteria that will be considered.

a) Qualifications and Prior Experience of Proposer (10 Points)

- i. Experience and qualifications of Proposer in managing and operating similar facilities will be considered, as well as overall financial health of the Proposer's organization, management and governance structure, and key leadership.

b) Proposed Use and Business Plan (20 Points)

- i. Quality and nature of proposed programming for the Facility will be considered, as well as financial and operational viability of the proposed business plan and its long-term potential to maintain the Burbank Center Stage as a vibrant center for educational, cultural, social, and recreational activity for Burbank residents.
- ii. Identify any business plans to reinvest proceeds to support educational, cultural, social, and recreational activity for the community.
- iii. Identify any business plans to provide subsidies in the form of reduced rates to resident nonprofit groups.

c) Business Plan Assumptions (10 Points)

- i. The extent and depth of research to support market assumptions in the proposed business plan will be considered, as well as the quality of the analysis to determine realistic goals and projections in the business plan.

d) Proposed Rate (10 Points)

- i. The competitiveness of the proposed monthly rate (including revenue sharing and capital investments, as may be applicable) payable to the City for the use of the Facility will be considered.

3. Phase 2 Evaluation for highest-rated Proposer(s):

- a) The City anticipates conducting interviews with the highest rated Proposer or Proposers, for up to 50 additional points.

4. Phase 3 Evaluation for highest-rated Proposer(s)

- a) Following Phase 2, the City will perform reference checks for the highest rated Proposer(s), for up to 20 additional points.

Selection of one (1) proposal from among all Proposers with the highest point total will be selected to start the negotiation process . The selection will be based on the experience and qualifications (both in general and more specifically as it relates to management and operations).

VIII. RFP TERMS AND CONDITIONS

1. This RFP is an invitation to submit proposals and does not commit the City in any way to enter into an agreement or to proceed with the RFP. The issuance of this RFP does not obligate the City to pay any costs whatsoever incurred by any Proposer in connection with: (a) the preparation or presentation of a proposal; (b) preparation or participation in an oral interview; (c) any supplements or modifications of this RFP; or negotiations with the City or other party arising out of or relating to this RFP or the subject matter of this RFP. The determination by the Review Panel to select and recommend a particular proposal for approval by the City Council shall not constitute acceptance of the Proposer's business offer, which may be subject to further negotiation prior to approval of a final sublease with the City. The final sublease will be subject to approval by City Council in its sole discretion.
2. The information presented in this RFP, and in any report or other information provided to Proposers, is provided for the convenience of the interested parties. It is the sole responsibility of interested parties to ensure that the information contained in this RFP or other documents is accurate and complete. No representations, assurances or warranties pertaining to the accuracy of such information are or will be provided by the City or its advisors or by the Review Panel.
3. The City expressly reserves the right at any time, and from time to time, for its own convenience, and in the City's sole discretion, to do any or all of the following:
 - a) Waive or correct any defect or technical error as to form or content of this RFP or in any response, proposal, or proposal procedure, as part of this RFP or any subsequent negotiation process;
 - b) Reject any and all proposals, without indicating any reason for such rejection;
 - c) Reissue a Request for Proposals;

- d) Modify or suspend any and all aspects of the selection process, modify the scope of the project or the required responses, or modify the selection process and/or evaluation criteria indicated in this RFP;
 - e) Request that Proposers clarify, supplement or modify the information submitted;
 - f) Extend deadlines for accepting responses, request amendments to responses after expiration of deadlines, or negotiate or approve final sublease;
 - g) Negotiate with any, all, or none of the Proposers;
 - h) Modify, in the City's sole discretion, the final sublease and operating agreement during the contract negotiations phase of this RFP;
 - i) If negotiations with the highest-ranked Proposer fail to proceed to the reasonable satisfaction of the City, at the City's sole and absolute discretion, the City may negotiate with and enter into a final sublease with another Proposer, or begin the selection process anew; and/or
 - j) Consider any information about any Proposer that is not expressly contained in Proposer's response.
4. Selection of a proposal for recommendation to City Council should not be construed as an approval of the proposed sublease, or terms of management and operation of the Facility. Further review and approval by other agencies and the City may be required. No final approval will have occurred unless and until the City Council has approved the final sublease.
5. By submitting a proposal, the Proposer certifies to the City that the Proposer has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or promised any other thing of value contingent on the award of an agreement with the City related to the Facility, to any City employee or official or to any contracting consultant hired by the City.
6. Responses to this RFP shall be subject to the City's obligations under the California Public Records Act (Cal. Government Code §§ 6250 et seq.). Information will be made available to the public upon written request after the final sublease has been awarded. Proprietary financial information submitted in response to this RFP will not be disclosed until and unless that person or entity is awarded the final agreement, except as set forth below. The City shall not be responsible under any circumstances for any damages or losses incurred by a Proposer or any other person or entity because of the release of any financial or other information. If Proposer believes that any information submitted with the proposal is confidential, Proposer

must mark such information as confidential and provide specific justification why such information, upon request, is not subject to disclosure by the City under the California Public Records Act.

7. Proposers shall clearly identify in their proposals those financial records or other information that the Proposer in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the City will attempt to reasonably maintain the confidentiality of such financial information, consistent with the City's general practices for maintaining the confidentiality of such information, and information so marked will be redacted from the copies presented to the public. However, generally, all documentation including financial information submitted by any Proposer to the City are public records under state and local law, including the California Public Records Act and the City will not under any circumstances be responsible for any damages or losses incurred by a Proposer or any other person or entity because of the release of such financial information.
8. The City will not return submittals or any information submitted in connection with a submittal.
9. All facts and opinions stated in this document (including any attachments or exhibits) and in the additional reports and information are based upon available information, and no representation or warranty is made with respect thereto.
10. Gratuities, Attempt to Secure Favorable Treatment - It is improper for any City officer, employee or agent to solicit consideration, in any form, from a Proposer with the implication, suggestion or statement that the Proposer's provision of the consideration may secure more favorable treatment for the Proposer in the award of the Contract Agreement or that the Proposer's failure to provide such consideration may negatively affect the City's consideration of the Proposer's submission. A Proposer shall not offer or give either directly or through an intermediary, consideration, in any form, to a City officer, employee or agent for the purpose of securing favorable treatment with respect to the award of the Contract Agreement.

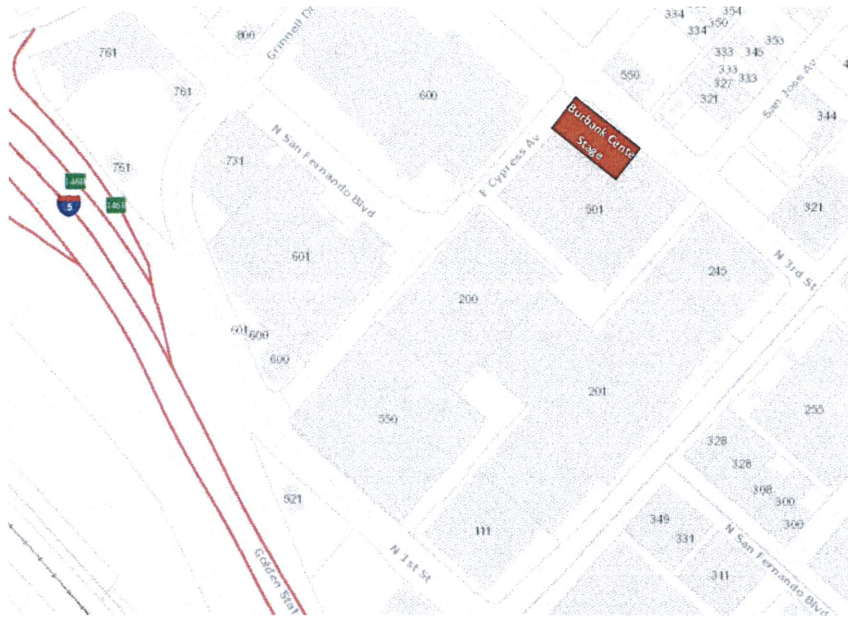
EXHIBIT A

Area Maps

Burbank Center Stage

555 North Third Street, at the corner of North Third Street and Cypress Avenue.

Map view:



Satellite view:



EXHIBIT B

Burbank Center Stage Photos

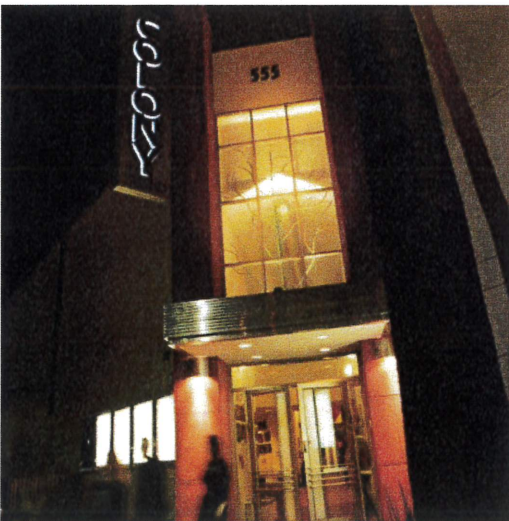
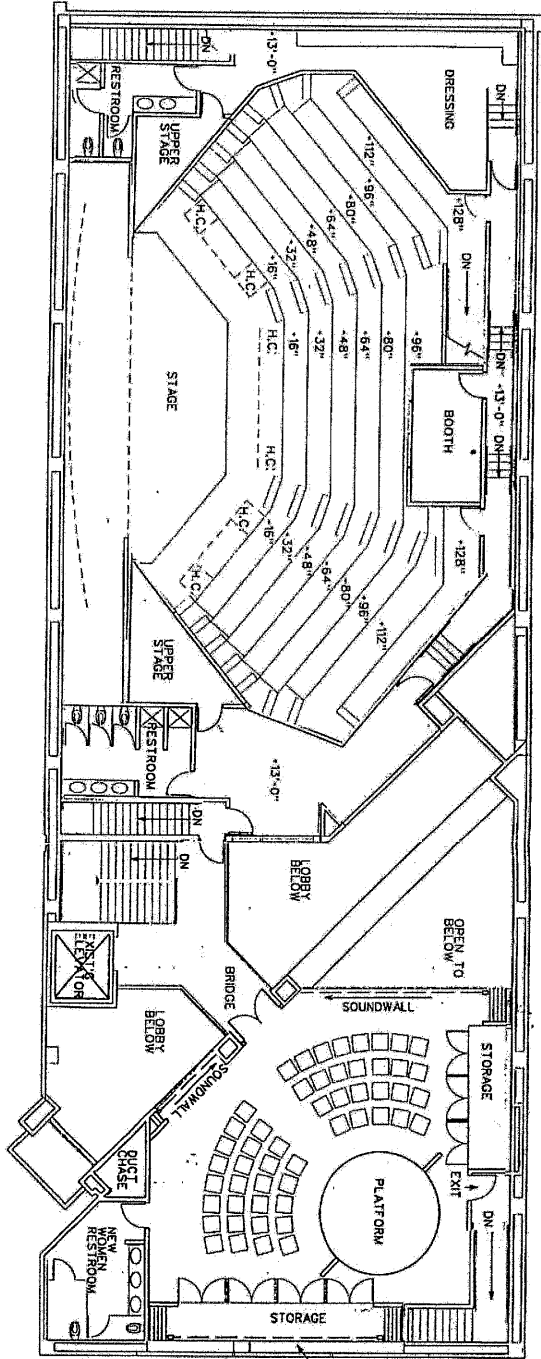


EXHIBIT C

Burbank Center Stage Upper Floor



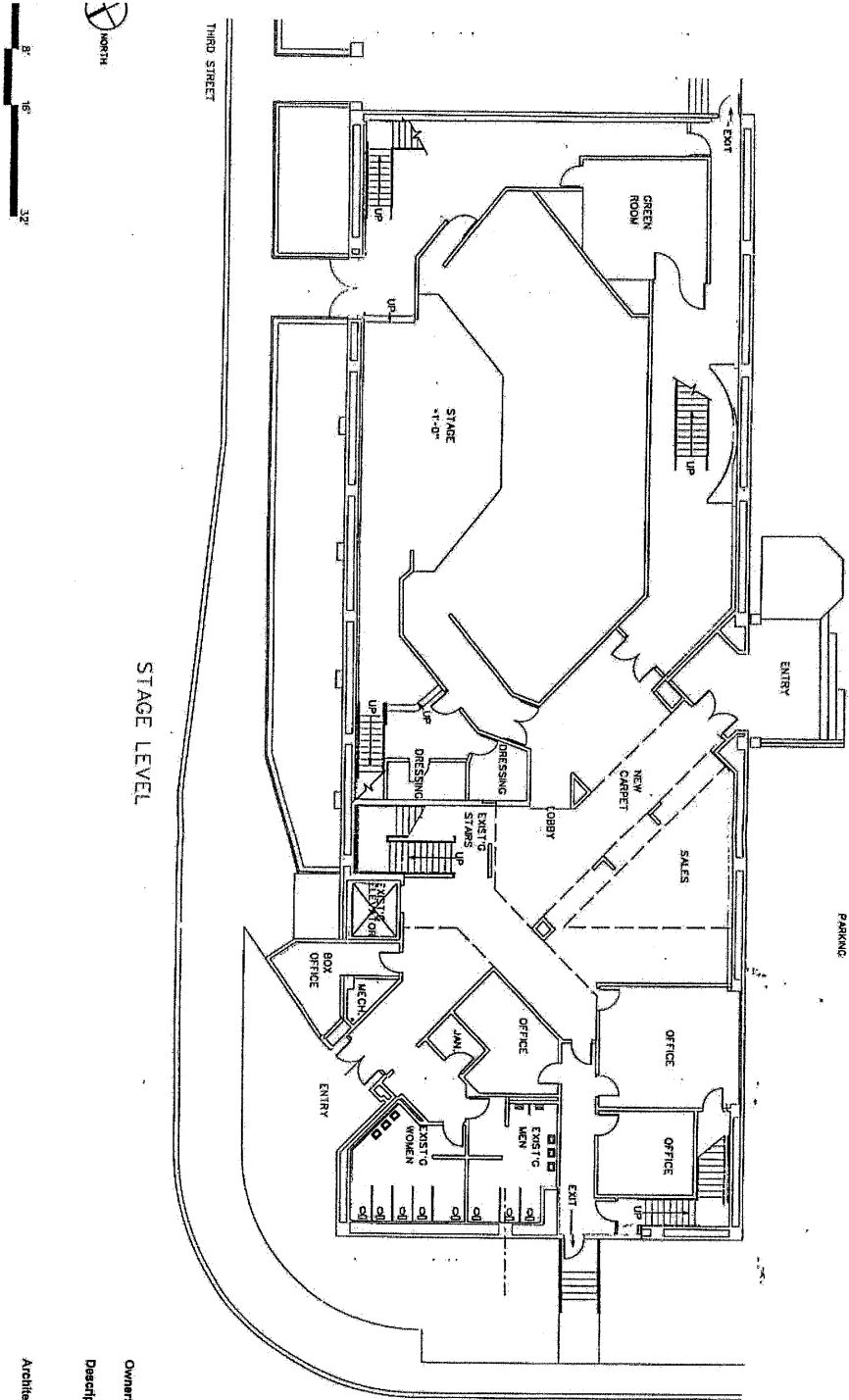
UPPER LEVEL



BACKOUT DRAPES FOR WINDOWS

EXHIBIT C

Burbank Center Stage Level



THEA

Owner: City of Burbank
 Description: 11,635 sq. ft. 2nd floor
 Architect: Stout & Associates
 Date: 11/1/81

3 1 0 1 1

EXHIBIT D

Burbank Center Stage Mainstage Seating Plan

CAPACITY: 266 seated

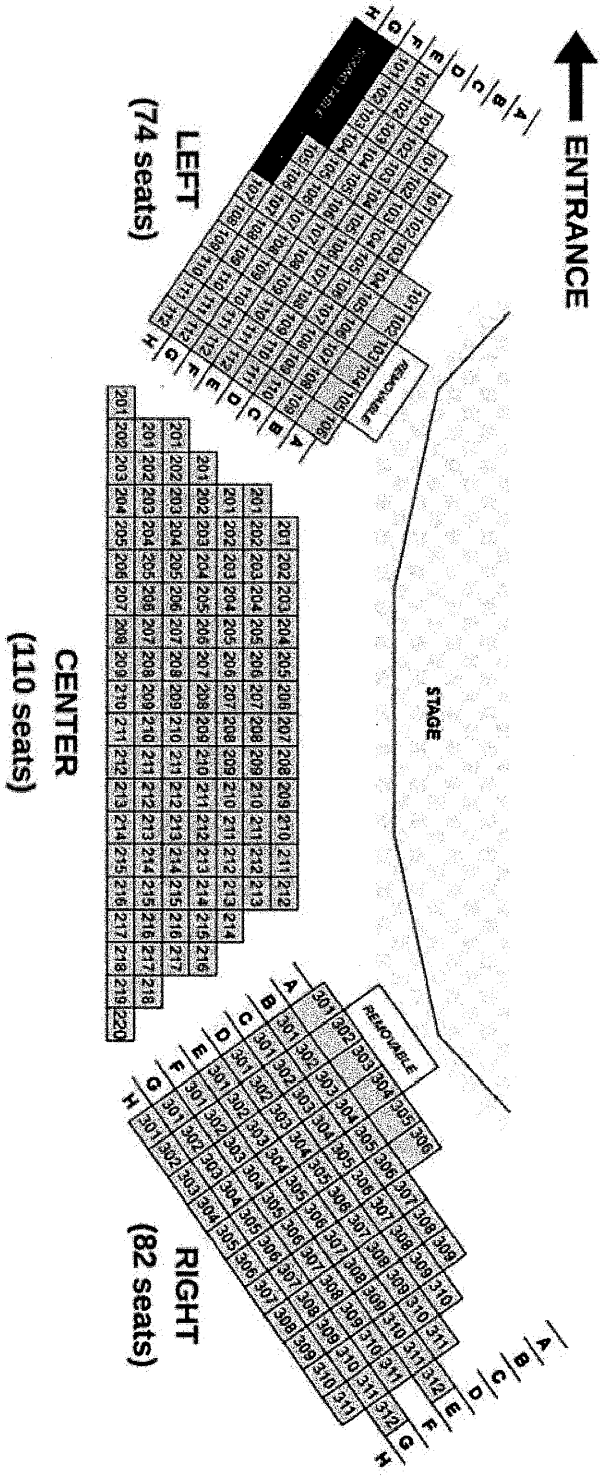


EXHIBIT E

Sample Table – Anticipated Number of Events

Burbank Center Stage Theater - Anticipated NUMBER OF EVENTS	YEAR 1			YEAR 2			YEAR 3			YEAR 4			YEAR 5		
	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby
Events produced by Operator															
Events presented by Operator, produced by renter															
Events promoted by Operator, produced by renter															
Rentals to community/civic groups															
Rentals to private/commercial clients															
Total Events															

EXHIBIT F

Sample Table – Estimated Annual Attendance

Burbank Center Stage Theater - Estimated ANNUAL ATTENDANCE	YEAR 1			YEAR 2			YEAR 3			YEAR 4			YEAR 5		
	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby	Main stage	Rehearsal Studio	Gallery & Lobby
Events produced by Operator															
Events presented by Operator, produced by renter															
Events promoted by Operator, produced by renter															
Rentals to community/civic groups															
Rentals to private/commercial clients															
Total Events															

EXHIBIT G

Sample Sublease and Operating Agreement

DRAFT

SUBLEASE AND OPERATING AGREEMENT

This Sublease and Operating Agreement (“**Sublease**”), is made and entered into as of this ## day of *****, 2023 (“**Effective Date**”) by and between the CITY OF BURBANK, a municipal corporation and charter city, (“**City**”), and ***** (“**Sublessee**”) (collectively, the “**Parties**”), on the following terms and conditions:

RECITALS

A. City is the “Tenant” under that certain Lease dated April 7, 1992 (the “**Master Lease**”), with HAAGEN-BURBANK PARTNERSHIP, a California general partnership, predecessor-in-interest to CAPREF Burbank LLC, as “Landlord,” (“**Mall**”) for certain real property located in the City of Burbank and more fully described as the “Premises” (the “**Premises**”) in the Master Lease.

B. Pursuant to Section 7.01 of the Master Lease, City is granted “the right to use the Premises for the operation of a cultural facility of the City of Burbank which provides educational, cultural, social and recreational activities to the general public [...]”

C. [Additional information to be inserted]

D. Sublessee desires to sublease from City the Premises for the purpose of providing educational, cultural, and recreational programming to the general public, and more specifically by operating, maintaining, and managing the Premises as [describe Sublessee’s proposed use of the Premises].

For valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Sublease.** City hereby subleases to Sublessee, and Sublessee hereby subleases from City, the Premises under the terms and conditions of this Sublease. This Sublease is subject to all of the terms and conditions of the Master Lease, attached and incorporated herein as Exhibit A, as may be amended, and, except as provided in this Sublease, Sublessee will assume and perform the obligations of City as “Tenant” in the Master Lease, and comply with all of the terms and conditions of the Master Lease (including any amendments thereto) as if it were the “Tenant” thereunder. Further, this Sublease is subject to that certain First Amended and Restated Construction, Operation and Reciprocal Easement Agreement dated December 6, 1990 by and among Haagen-Burbank Partnership and various tenants of the shopping center in which the Premises is located (the “**Reciprocal Easement Agreement**”), and the provisions of the Burbank Municipal Code, including but not limited to, zoning restrictions.

2. **Term of Sublease; Extension of Term; Right to Terminate.**

(a) **Term.** The term of this Sublease (the “**Term**”) will commence on [ENTER DATE] (“**Term Commencement Date**”), and will end [ENTER LENGTH] thereafter (the “**Term**”), subject to early termination or extension as provided in this Sublease.

(b) **Extension of Term.** Sublessee will have the right to request to extend the Term for three (3) separate and successive periods of five (5) years each from the date upon which the Term would otherwise expire, provided that Sublessee is in compliance with all provisions in this Sublease. If Sublessee is not in compliance with all provisions of this Sublease, Sublessee will not have the right to request an extension of the Term as provided herein. An extension will only be effective upon the occurrence of the following events:

(i) Sublessee must give City written notice of Sublessee's request for an extension at least six (6) months prior to the date this Sublease would otherwise expire.

(ii) Once Sublessee makes a request for any extension of the Term, the extension will be administratively granted upon determination by the City's Parks and Recreation Director ("**Director**"), in the Director's sole discretion, that Sublessee is in substantial compliance with the Goals and Objectives outlined in Exhibit B ("**Goals**").

(iii) Prior to granting an extension of the Term, the Parties must agree to new Goals for the extension period. Furthermore, prior to extending the Term the Parties may agree to amend the terms of this Sublease subject to approval by the City Council.

(c) **Notice of Director's Determination.** The Director will give written notice to Sublessee within 30 calendar days after receipt of Sublessee's request for extension whether or not, in the Director's sole discretion, Sublessee is in substantial compliance with the Goals. If the Director determines Sublessee is in substantial compliance with the Goals, the extension will be granted. If the Director determines that Sublessee is not in substantial compliance with the Goals and Sublessee disagrees, Sublessee shall have the right, within three (3) calendar days of receipt of the Director's determination, to make a written request, for a meeting with the Director. The meeting will be held within twenty-one (21) calendar days of the Director's receipt of the request. During this meeting, Sublessee and Director will specifically discuss why Director believes Sublessee is not in substantial compliance with the Goals, and attempt to reach a compromise, including, but not limited to, allowing Sublessee a reasonable period to cure any deficiencies. Following such meeting, the Director may issue a new determination or establish conditions upon which an extension may be granted. The Director's determination will be final.

(d) **Right to Terminate.** Notwithstanding the foregoing, Sublessee and the City will each have the right to terminate this Sublease at any time upon delivery to the other party of at least 90 days' notice of the terminating party's election to do so, and the Sublease will terminate on the termination date set forth in any such notice.

(e) **Month-to-month.** If City remains in negotiations with a future sublessee at the end of the Term and any extensions thereof, in the Director's sole discretion and subject to approval by Sublessee, City and Sublessee may continue performance under this Sublease on a month-to-month basis not to exceed six months unless a longer time is mutually agreed to by the Parties.

3. Acceptance and Suitability of the Premises. Sublessee acknowledges that neither City nor any agent of the City has made any representation or warranty with respect to the Premises or the suitability or fitness thereof for the conduct of Sublessee's use. The taking of possession or use of the Premises by Sublessee for any purpose will conclusively establish that the Premises were then in satisfactory condition and in conformity with the Sublease in all respects.

4. Rent.

(a) **Rent.** All sums payable by Sublessee pursuant to this Sublease shall be considered "**Rent.**"

(b) **Base Rent.** Sublessee will pay the sum of \$##### per month ("**Base Rent**") to City. Base Rent payable to City shall be paid monthly, in advance on the first day of each calendar month for which Base Rent is due, without deduction or offset.

(c) **Participation/Percentage Rent.** Percentage Rent will be #% Gross Revenues. "**Gross Revenues**" shall be calculated based on the difference between all earned revenues from the sale of goods and the provision of services from the operation of the Premises or its various components, as well as all earned revenues from the temporary rental of the Premises to third-parties, minus operating expenses, cash gifts, donations and grants made to Sublessee where no return consideration is given by Sublessee.

(d) **Escalation.** [to be inserted]

(e) **Late Charge; Interest.** City may at its option impose a 5% late charge for payments made more than 7 days late, without waiving any other remedies available for default. Notwithstanding the foregoing, no late charge will accrue on the first such delinquency in any calendar year until the expiration of a ten (10) day written notice from City to Sublessee stating that Sublessee is so overdue. Failure to impose a late charge will not be a waiver of City's rights hereunder. In addition, any Rent not paid when due will bear interest at the rate of 10% per annum until paid.

(f) **Reserved**

5. Transfer of Personal Property. On the Term Commencement Date, City may transfer and convey to Sublessee certain personal property consisting of furniture, fixtures, equipment, machinery, and other personal property utilized in the operation of the Premises that Sublessee has agreed to lease from City ("**Personal Property**"). Sublessee agrees to accept all Personal Property as is and acknowledges that all ongoing expenses related to maintain and replacing the Personal Property will be an operational expense to Sublessee.

6. Management, Use and Operation.

(a) Sublessee may use the Premises as a community arts and/or performance center for the purpose of providing a venue for community groups and individuals to showcase educational, cultural, social or recreational activities, as limited pursuant to the terms hereof. Use of the Premises may include, but will not necessarily be limited to, live theatre productions including joint ventures between the Sublessee and third-party theatre groups, cabaret, readings, workshops, seminars, exhibits, children's theater, benefits, classes and lectures, and will entail extensive use of the auditorium and multi-purpose room. Furthermore, Sublessee's use will be consistent with use of the Premises by the "Tenant" in accordance with the Master Lease.

(b) Basic Service Obligations.

(i) Provide first class customer service to all visitors, audiences, and rental clients (as applicable).

(ii) Establish pricing levels for all proposed programming including in-house events and third-party rentals (as applicable).

(iii) Establish, maintain, and pay for the telephone and website, with up-to-date information about the programs and events, contact information, access instructions, etc.

(iv) Maintain consistent online commerce and office hours as necessary to accommodate visitors, phone calls, and meetings that may arise.

(v) Establish requirements for use by third-party rentals, including but not limited to a rental or occupancy agreement, the basic form shall be provided to the Director upon request, which must be executed by all third-parties desiring to rent the Premises. At a minimum, the rental or occupancy agreement shall (1) establish box office and Premises hours; (2) enumerate specific services to be provided by Sublessee; (3) require renters to exercise safe and reasonable care in the use of the Premises and its fixtures and equipment; (4) require renters to be fully responsible for damage to the Premises and its fixtures caused by such renters or their audiences, ordinary wear and tear excluded; (5) require renters to furnish proof of liability insurance for all of the renter's activities and audiences, affording protection to a limit of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage, naming Sublessee, the City, the Mall and the Mall's lender if requested by the Mall, as additional insureds on a separate endorsement to the insurance policy; and (6) immediately terminate upon the expiration or other termination of this Sublease.

(c) [Reserved]

(d) Operational Guidelines. Sublessee will develop a set of guidelines ("Operational Guidelines") for the Premises. The Operational Guidelines will include hours of operation and other policies relating to the operation of the Premises. Sublessee must comply with the Operational Guidelines at all times. At a minimum, the Premises must be operated [describe basic days of operation] throughout the year and may only be closed on holidays specified in the Operational Guidelines. The Premises must be kept open during all hours necessary to adequately serve the public. Any changes in the days and hours for operation will be subject to approval by the Director.

(e) Management and Operations. [describe management structure]

(i) Premises Personnel. Sublessee will, in its sole discretion, hire Premises staff, including all on-site management personnel, to oversee all rentals, programming and production, janitorial staff, administrative staff and others deemed by Sublessee to be appropriate for the efficient operation of the Premises. Such personnel may be hired as qualified independent contractors rather than employees to perform specified services. If Sublessee contracts with an independent contractor to provide such services, Sublessee shall ensure that the independent contractor complies with all provisions contained in this Sublease relating to the management, use, and operation of the Premises. Upon request by City, Sublessee shall submit a copy of its most recent agreement with any such independent contractor to the Director. At a minimum, the agreement shall require the independent contractor to comply with all terms and provisions contained in this Sublease. Sublessee's failure to ensure compliance by its independent contractor in accordance with this section shall constitute a breach of this Sublease.

(ii) Live Scan Fingerprinting and Background Check by the US Department of Justice (DOJ). All employees, independent contractors, and volunteers of Sublessee interacting with minors or who have supervisory or disciplinary authority over minors must complete and pass the City of Burbank Live Scan Fingerprinting and background check clearance by DOJ prior to performing work or other services for Sublessee in such a capacity. Sublessee will be responsible for paying all applicable fees related to the Live Scan fingerprinting and background check.

(f) Management and Operations Plan; Proposed Annual Budget. Sublessee must submit to the City for review, by [Date] of each year, a Management and Operations Plan that includes a detailed proposal for providing Management and Operations services at the Premises. In addition, Sublessee must submit a proposed operating budget (the "Proposed Annual Budget") to the City for the upcoming calendar year. The Proposed Annual Budget must specify the amount of working capital required to continue operations of the Premises for the upcoming fiscal year (defined as July 1 through June 30) in light of all major policy decisions, specify all anticipated expenses required to operate the Premises and all projected expenses for long term improvements at the Premises. City will have the right to comment upon and make suggestions with respect to the Management and Operations Plan and Proposed Annual Budget, provided, however, while Sublessee must consider all of City's suggestions and comments, Sublessee will not be obligated to implement the same. Such annual review will take place at a meeting between the Sublessee, the Director and such other persons, as the parties consider necessary.

(g) Goals and Objectives. Sublessee agrees to manage, use, and operate the Premises at all times in compliance with the Goals. The Goals will be subject to annual review to occur no later than one year following the Term Commencement Date, and continuing on or about that anniversary throughout the Term. As part of this review, Sublessee will submit a financial statement for the most recently completed fiscal year in a form approved by the City. The annual review will occur at a meeting between Sublessee's representative(s) and the Director, and other individuals the Parties consider necessary. As a result of this review and with the approval of the members of the City's Park, Recreation and Community Services Board, the Parties may agree to amend, modify, or eliminate any of the goals or objectives in light of changing conditions and in furtherance of the best interests of the community.

(h) Safety and Processing Claims. Sublessee must maintain safety standards that are consistent with acceptable industry practices for similar facilities. Sublessee will investigate and process all claims including those for property damage or personal injury. Sublessee will cooperate fully with City in the investigation of any property damage, accidental injury or death occurring on the Premises, including a prompt report to the Director.

(i) License, Permits, Business Taxes and Accreditations. Sublessee will apply and use its commercially reasonable efforts to obtain and maintain, all licenses, permits, business taxes and accreditations required in connection with the management and operations of the Premises, the cost of which will be an operating expense incurred by the Sublessee. City will cooperate with Sublessee in applying for, obtaining, and maintaining such licenses, permits, and accreditations, as applicable.

(j) In connection with its use of the Premises, Sublessee must comply with all applicable laws and ordinances concerning such use. Sublessee agrees not to commit or suffer to be committed any waste or nuisance in, or about the Premises (including allowing any offensive odors to carry outside of the Premises). Sublessee will comply in all material respects with all governmental laws, ordinances and regulations which pertain to or apply to the use of the Premises, now or subsequently imposed, concerning the use or operation of the Premises.

7. Maintenance and Repair; Alterations.

(a) Sublessee's Maintenance and Repair Obligations.

(i) Sublessee hereby acknowledges and represents that Sublessee has inspected the Premises and agrees to sublease the Premises in its present condition. In that condition, Sublessee agrees, at Sublessee's sole cost and expense and without right of reimbursement from the City, but subject to the provisions of this section, to make such repairs and improvements to the interior, non-structural portions of the Premises as may be necessary for Sublessee's use, and to maintain the Premises in good and sanitary order and repair; provided, however, that any such repairs, improvements, or maintenance will be subject to the terms and conditions imposed upon "Tenant" in the Master Lease unless otherwise provided herein. Sublessee will be responsible for non-capital repair and replacement, and general cleaning and maintenance of the interior of the Premises, as well as all repair obligations of "Tenant" under the Master Lease unless otherwise provided herein. During Sublessee's occupancy of the Premises under this Sublease, Sublessee will be responsible for repair, replacement and maintenance of all improvements made in and to the Premises by Sublessee (whether of a capital or non-capital nature). Sublessee will obtain City's approval prior to completing any repair, replacement, or maintenance to the Premises, which approval will not be unreasonably withheld. In the event any repairs, improvements, or maintenance require approval by the Mall under the Master Lease, Sublessee will first obtain City's approval of such repairs, improvements, or maintenance to the Premises. Sublessee will provide timely notice to City and/or Mall, as applicable, of any repairs that are the responsibility of City or Mall of which Sublessee is aware of. Upon the expiration or termination of this Sublease, Sublessee agrees to surrender the Premises in good and sanitary order, condition and repair; permitted or approved alterations, improvements, additions, and reasonable wear and tear excepted.

(ii) Janitorial Service. Sublessee will be responsible for complete janitorial services and the furnishing of janitorial supplies, lamps and tubes for the proper maintenance of all facilities at the Premises.

(b) City's Maintenance and Repair Obligations. City will be responsible for any and all improvements and maintenance necessary for compliance with applicable laws (including, without limitation, the Americans with Disabilities Act), and for maintenance related to the HVAC and heating equipment, for the pipes and conduits serving the Premises (including those contained between the exterior and interior walls), and for maintenance related to the elevator. **City will be responsible for capital repair of the Tenant Improvements at the Premises listed on Exhibit C.**

(c) **Mall's Maintenance and Repair Obligations.** The Parties acknowledge that the Mall is responsible for certain maintenance and repairs to the Premises as outlined in the Master Lease, and will provide Mall with notice of any outstanding repairs or maintenance that is the responsibility of the Mall.

(d) **Capital Improvements.** Except as otherwise provided herein or as stated in the Goals and Objectives, neither Sublessee nor City will be obligated to construct any capital improvements to the Premises unless required by the Master Lease, nor will Sublessee or City be obligated to perform any repairs or maintenance to the roof (including the roof membrane), building systems, or structural components of the Premises (including the foundation), or replace any portion of the Premises, unless the cause for such repairs is due to the negligence or willful misconduct of Sublessee, its agents or employees or caused by alterations, addition or improvements made by Sublessee or anyone claiming under Sublessee, in which case Sublessee is required under this Sublease to make such repairs.

(e) **Insurance Rates.** Sublessee will not do or permit activities on or in the Premises, nor bring or keep anything in the Premises, that will in any way invalidate, increase the existing premium rate of, or otherwise affect, any insurance upon the Premises, and if such activities should result in any increase in the existing premium rate of insurance, then Sublessee shall be liable for such additional cost.

(f) **Alterations.**

(i) **General.** Except as otherwise provided in this paragraph, Sublessee will not make any alterations, additions, or improvements to the Premises, without City's prior written approval, which approval will not unreasonably be withheld or delayed. Furthermore, if such alterations, additions, or improvements require approval by the Mall under the Master Lease, Sublessee will obtain the Mall's approval prior to making such alterations, additions, or improvements. If Sublessee desires to make any such alterations, additions or improvements, Sublessee will provide to City at least 10 calendar days' written notice prior to commencement of construction. City will have the right to approve the contractor used by Sublessee for any work in the Premises, and to post notices of non-responsibility in connection with work being performed by Sublessee in the Premises. Sublessee agrees to indemnify and hold the City, Mall, and the Premises free and harmless from any and all liabilities, claims, liens, encumbrances and judgments created or suffered in connection with labor, services or materials furnished in connection with any alterations or additions which Sublessee causes to be made to the Premises. Sublessee will not permit any mechanic's lien or stop order or other encumbrance as outlined in Section 2.04 of the Master Lease to be recorded against the Premises. If any mechanic's lien or stop order or other encumbrance is recorded against the Premises, Sublessee will either cause the same to be discharged of record within ten (10) days after the date of recordation, or, if Sublessee in its discretion determines to contest the lien, Sublessee must furnish such security and bond as may be reasonably necessary to prevent any foreclosure proceedings against the Premises during the pendency of such contest. Work by Sublessee shall comply with all laws then applicable to the Premises. The foregoing will not be deemed a waiver of the police powers of the City of Burbank to review and approve all applications for building permits to confirm that the proposed improvements comply with applicable building codes.

(ii) **Signs.** Sublessee will pay for and perform removal of all exterior signs and other advertising features installed at the Premises as of the Term Commencement Date, including but not limited to the marquee sign. Such removal will be subject to approval by the Mall. If Sublessee chooses not to replace such signs or advertisements with new signage/advertisements, Sublessee agrees to restore the exterior of the Premises to a condition reasonably satisfactory to the City and the Mall following such removal.

Sublessee may also pay for and perform installation of new exterior signage that advertises Sublessee's use of the Premises, subject to approval by the City and the Mall. All signage will be subject to the terms and conditions of the Master Lease and REA. At Sublessee's sole cost and within 30 days of the expiration or other termination of this Sublease, Sublessee must remove all exterior signs and other advertising features installed by Sublessee, and restore the Premises to a condition reasonably satisfactory to City and the Mall.

(g) **Ownership of Improvements.** All improvements (which will be anything affixed to the Premises, unless determined otherwise by the City) made to the Premises will be owned by City upon expiration of the Term or sooner termination of this Sublease. Sublessee will not, however, remove any other improvements from the Premises nor waste, destroy, or modify any improvements on the Premises, except as permitted by this Sublease. All improvements on the Premises at the expiration of the Term or sooner termination of the Sublease will without compensation to Sublessee, then become City property free and clear of all claims to or against them by Sublessee or any third person, and Sublessee will defend and indemnify City against all liability and loss arising from such claims or from City's exercise of the rights conferred by this paragraph.

8. Utilities and Services.

(a) **Utilities.** Sublessee will pay all utility charges for the Premises. If City or Mall incurs any costs for utilities, including but not limited to water, electric and/or gas, then Sublessee will reimburse City or Mall within 5 days after being billed therefor. Upon request of City, Sublessee will provide to City proof of payment of any or all utilities in a manner acceptable to City in its reasonable discretion.

(b) **Regulations.** Sublessee must comply with all government laws or regulations regarding the use or reduction of use of utilities on the Premises. Interruption of services or utilities will not be deemed an eviction or disturbance of Sublessee's use and possession of the Premises, render City or Mall liable to Sublessee for damages, or relieve Sublessee from performance of Sublessee's obligations under this Sublease.

(c) **Security.** City will not provide security service or adopt security measures regarding the Premises.

9. Taxes and Assessments.

(a) **Possessory Interest Taxes.** Sublessee recognizes and understands that this Sublease may create a possessory interest subject to property taxation levied on such interest. Sublessee agrees to pay promptly, prior to delinquency, all such taxes, if any, directly to the tax collector.

(b) **Real Estate and Other Ad Valorem Taxes and Assessments.** To the extent Sublessee, or its subtenants or assigns, is not a tax-exempt entity with regard to property taxes or otherwise fails to maintain its tax-exempt status with regard to property taxes, Sublessee will pay during each year of the Term, all real estate and other ad valorem taxes and assessments of every kind (including general and special assessments, foreseen and unforeseen) with respect to all land, buildings and improvements on the Premises (collectively, "**Taxes**") that may be charged directly by the Mall against Sublessee or otherwise charged against the City pursuant to the Master Lease. For purposes of this paragraph, the provisions in the Master Lease will govern Sublessee's rights and obligations with regard to such Taxes.

(c) **Other Taxes.** Sublessee will pay all taxes, license fees or other governmental charges assessed or imposed on the Personal Property owned by Sublessee

located on the Premises or upon the business operations of Sublessee conducted on the Premises.

10. Accounting Systems and Audits.

(a) **Accounting Systems and Business Records.** Sublessee must maintain an accurate accounting of all receipts and disbursements in connection with the Premises. The method of accounting and bank accounts established for the Premises will be separate from the accounting system used by Sublessee for any other matters. Sublessee's accounting system will be in accordance with Generally Accepted Accounting Principles ("GAAP"). Such methods include the keeping of the following documents:

- (i) Regular books of accounting such as general ledgers.
- (ii) Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- (iii) State and Federal income tax returns, sales tax returns and checks and other documents proving payment of sums shown.
- (iv) Internal controls on the receipt and recording of all cash receipts, and all other operational financial accounting controls and procedures as they relate to gross revenues are subject to the approval of the City. At a minimum, the internal control of cash must include an electronic cash register Point of Sale ("POS") with an auditable daily tape, daily reconciliation of the cash deposit and sales, issuance of physical dated receipt to every patron, a daily activity report listing number of patrons, total collection, merchandise sold (if applicable) and a monthly summary report.
- (v) Any other accounting records that City, in its reasonable discretion deems necessary for proper reporting of receipts.

(b) **Retention of Financial Records.** Sublessee will maintain, at its principal offices, its financial records pertaining to such books of account, records, cash receipts, and other pertinent data pertaining to the Premises, which must be kept for a period of at least four (4) years after the conclusion of any fiscal year. The receipt by City of any statement, or any payment of additional rent for any period, will not bind City as to the correctness of the statement or the payment.

(c) **Audit.** City reserves the right during the Term on an annual basis and within four (4) years after expiration or termination of this Sublease to inspect and examine all Sublessee's books of account, records, cash receipts, and other pertinent data relevant to the operation, maintenance, and management of the Premises at City's expense, except as provided in this section. Specifically:

- (i) An annual audited statement prepared by a certified public accountant, in accordance with general GAAP detailing all income may be requested to be submitted within ninety (90) days of the closing of the fiscal year. The annual statement must include all Gross Revenues (including itemized calculations of such Gross Revenues) and itemized operating expenses, in addition to any other items set forth in this Sublease for the preceding fiscal year. Additionally, the Sublessee may be asked to provide tax return prepared by an independent certified public accountant. If Sublessee fails to deliver such statement and/or tax returns to City within said ninety (90) day period, City will have the right thereafter to audit or cause an audit to be performed, at the Sublessee's expense.

(ii) The City's right to audit will extend during the length of this Sublease and for a period of four (4) years, or longer if required by law, following the date of final payment under this Sublease. Sublessee agrees to retain all necessary records/documentation for the entire length of the City's right to audit.

(iii) An audit may be accomplished, in the City's sole discretion, by either City forces or an outside auditing firm. In addition, City retains the right to perform spot check audits no more than once a year and upon providing notice to Sublessee at least forty-eight (48) hours in advance; this limitation does not apply to audits required to investigate criminal or suspicious behavior.

(iv) Sublessee will be notified in writing of any exception taken as a result of an audit. Any adjustments and/or payments which Sublessee agrees must be made as a result of any such audit or inspection of Sublessee's invoices and/or records will be made within thirty (30) days from presentation of City's findings to Sublessee. If Sublessee fails to make such payment, Sublessee agrees to pay interest, accruing monthly, at the maximum legal rate. Interest will be computed from the date of written notification of exception(s) to the date Sublessee reimburses City for any exception(s). If audit inspection or examination in accordance with this section, discloses underpayments (of any nature) by Sublessee to City in excess of one percent (1%) of the value of that portion of the Sublease that was audited, the actual cost of City's audit will be reimbursed to City by Sublessee.

(v) To the extent legally possible, City will keep information gained from such statements, inspection, or audit confidential (subject to applicable laws, including but not limited, to the California Public Records Act and the Ralph M. Brown Act), and will only disclose such information for the purpose of administering or otherwise carrying out the purposes of this Sublease.

11. Board Reports. To ensure compliance with the terms of this Sublease the Sublessee must prepare and present annual reports to the City's Park, Recreation, and Community Services Board, identifying all aspects of the operations as defined herein. Reporting will include but not be limited to: revenue, expenses, programming, attendance and maintenance. Sublessee will provide an initial report to the Board after the first one-hundred eighty (180) days following the Term Commencement Date. Thereafter, reports will be provided to the Board annually, on the same date that the Board reviews and approves the Goals.

12. Insurance and Indemnity.

(a) **Mechanics Liens.** Sublessee will not allow any mechanics liens to attach to the Premises or Sublessee's interest in the Premises as a result of its activities, and Sublessee will cause any such liens to be released, by bond or otherwise, within 10 days after the filing thereof.

(b) **Insurance.** Sublessee will keep and maintain in full force and effect, from the Term Commencement Date, the following:

(i) Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage (including loss of use thereof) arising out of Sublessee's operations under this Sublease.

(ii) All risk property insurance covering the Premises, with coverage limits not less than the full replacement cost of the Premises. Sublessee must also maintain insurance coverage on at the full replacement cost, or otherwise assume financial liability for, the Personal Property and the furnishings and equipment owned by Sublessee and any tenant improvements or betterments installed by Sublessee.

(iii) Workers' compensation and employer's liability or other similar insurance pursuant to all applicable state and local statutes and regulations. The policy must be endorsed to waive all rights of recovery against the City, members of the City Council, and officers, employees and agents of the City.

(iv) Comprehensive automobile liability coverage with combined single limit of \$2,000,000 each occurrence.

(v) If the Sublessee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(c) **Additional Requirements.**

(i) Sublessee will provide City with a current Certificate of Insurance, including the additional insured endorsement in a form as approved by the City for the insurance required by this Sublease (except for Worker's Compensation) evidencing coverage(s) and limits prior to the Term Commencement Date and naming the City, its City Council, City's officers, City's employees and City's agents, Mall, and other entities as may be required by Mall as additional insureds (collectively, "Insureds"), as additional insureds under all insurance coverage required by this Sublease. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. All required policies shall remain in force throughout the life of this Sublease and shall be payable on a "per occurrence" basis unless City specifically consents in writing to a "claims made" basis. Should any of the required insurance policies in this Sublease be cancelled or non-renewed, it is Sublessee's duty to notify City immediately upon receipt of the notice of cancellation or non-renewal. Failure to provide and maintain the insurance required by this Sublease will constitute a material breach of this Sublease.

(ii) Sublessee hereby grants to City a waiver of any right to subrogation which any insurer of the Sublessee may acquire against the City by virtue of the payment of any loss under such insurance. Sublessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(iii) Self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Sublessee shall obtain coverage to reduce or eliminate

such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Sublessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(iv) Insurance must be placed with insurers authorized to transact business (i.e. admitted) in the State of California so as to provide access to the California Guaranty Association and other state regulation or have a "Best's Guide" rating of no less than A-VII.

(v) Sublessee must cause its subcontractors to obtain and maintain for the duration of this Sublease or such further period as specified herein, all of the coverages described in this Section. Sublessee warrants that it will require all its subcontractors to name both the Sublessee, the City, and the Mall as additional insureds on endorsements to the Consultants' insurance policies, as required above.

(vi) Certificate of Coverage. Sublessee must submit a certificate of coverage and proof of payment of premiums to City annually and at other times upon City's request. Any insurance required to be carried under this Sublease may be included as part of any blanket or other policy or policies of insurance, subject to the provisions of this Sublease.

(vii) If Sublessee fails to maintain any required policy of insurance, the City may obtain said policy and Sublessee shall immediately pay to the City as additional Rent, any costs and expenses incurred by the City in acquiring such policy.

(viii) In addition to the above requirements, Sublessee agrees to obtain additional policies of insurance in the event such policies are required by the Mall under the Master Lease.

(ix) Sublessee agrees that it shall require any third-party independent contractor(s) who utilize the Premises to comply with all insurance requirements outlined in this Section 12, including but not limited to the naming of additional insureds.

(x) The City reserves the right to annually review the insurance requirements listed herein and update such requirements by providing Sublessee with written notice.

(d) **Indemnity.** Except for City's sole, gross negligence or willful misconduct, Sublessee shall indemnify, protect, defend and hold harmless the Premises, City and City's representatives, council members, board members, agents, and employees from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Sublessee, or resulting from Sublessee's failure to comply with any term of this Sublease. If any action or proceeding is brought against City by reason of any of the foregoing matters, Sublessee shall upon notice defend the same at Sublessee's expense by counsel reasonably satisfactory to City and City shall cooperate with Sublessee in such defense. City need not have first paid any such claim in order to be defended or indemnified. In addition, Sublessee assumes the indemnification obligations of "Tenant" under the Master Lease and as specifically stated in Article 11 of the Master Lease.

(e) **Exemption of City from Liability.** City shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Sublessee, Sublessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause or condition or design of, or any defect in the Premises, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places, or where caused by third parties (including criminal acts). City shall not be liable for any damages arising from any act or neglect of any other tenant of City or Mall. Notwithstanding City's negligence or breach of this Sublease, City shall under no circumstances be liable for injury to Sublessee's business or for any loss of income or profit therefrom.

13. Use by City. Throughout the Term, at least five (5) days each year shall be made available for use of the Premises by the City, at no cost. The exact dates and specific events shall be determined by Sublessee and the Director. Best efforts will be used to achieve maximum scheduling separation for duplicative productions. Dates allocated to the City, but not used by them, shall revert to the Sublessee's use.

14. Sublessee Support Services for City Use. Upon request, the Sublessee will provide the following support services for City or City-selected community groups when such are utilizing the Premises pursuant to Section 13 above (collectively, "Support Services"). City or City selected community group shall pay Sublessee the direct costs related to such Support Services:

- (a) Notification on the outdoor marquee at the Premises of current and upcoming events (subject to the Sublessee's rights of use relative to such marquee, as set forth in the Sublease).
- (b) Use at the Premises of the Sublessee's lighting, sound, projection, intercom, headset, and audio/video monitoring systems under the supervision of the Sublessee's staff.
- (c) Use of the theater backstage areas at the Premises for sets, props, and costumes during performance or use periods in the main auditorium.
- (d) Basic consulting services by the Sublessee's Technical Director to community groups using the facilities at the Premises.
- (e) If requested, help and consultation by the Sublessee's professional staff of directors, subject to availability.
- (f) Maintenance, janitorial and lockup services at the Premises.

15. Honoring of Existing Contracts. The Sublessee must honor existing Contracts and/or Agreements previously approved by the City and executed with the former Sublessee for the 2023 calendar year for use of the Premises for community performances.

16. Assignment and Subletting.

(a) Except as otherwise authorized in this Sublease, Sublessee will not voluntarily assign, sublet, transfer, mortgage, or otherwise transfer or encumber all or any part of Sublessee's interest in this Sublease or in the Premises, or rent or sublease said Premises or any part thereof, without the prior written consent of the Director. Any attempted assignment, transfer, sublease, encumbering or renting without such consent (where such consent is required) will be void and constitute a default of this Sublease. In the event a receiver, trustee or conservator is appointed to take possession of the assets of Sublessee, or the possession of the Premises, or a general assignment is made by Sublessee for the benefit of creditors, or any action is taken by or against Sublessee under any insolvency law or bankruptcy act, the City, at its option, may forthwith terminate this Sublease.

(b) Notwithstanding the foregoing, Sublessee shall be permitted to enter into short-term rental or occupancy agreements with third-parties for use of the Premises for live performance activities and other uses for limited periods of time consistent with the purposes, uses, and requirements outlined in Section 6 of this Sublease.

(c) Any consent by the City to the assignment or other transfer of rights hereunder by the Sublessee will not release the Sublessee from any obligations under this Sublease, and the City's consent, unless expressly provided therein, shall not include consent to any subsequent assignment or transfer by Sublessee or the Sublessee's heirs, successors or assigns. It will be reasonable for City to disapprove any request for assignment or subletting that is to a person or entity who does not intend to use the Premises for the purposes and uses outlined in this Sublease. Sublessee will pay any costs incurred by City in connection with a request for assignment or subletting. Any sublease authorized above will not relieve Sublessee of its obligations under this Sublease, including but not limited to requirements to indemnify and insure City and Mall.

17. Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Sublease means any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of City to any governmental entity or third party (including but not limited to the Mall) under any applicable statute or common law theory, or pursuant to the Master Lease. Hazardous Substances includes, but is not limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof.

(b) Sublessee will not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of City and timely compliance (at Sublessee's expense) with all applicable laws. "**Reportable Use**" means (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any applicable law requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Sublessee may use any ordinary and customary materials reasonably required to be used in the normal course of the use of the Premises permitted under this Sublease, so long as such use is in compliance with all applicable laws, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose City to any liability therefor.

(c) **Duty to Inform City.** If Sublessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by City, Sublessee must immediately give written notice of such fact to City, and provide City with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(d) **Sublessee Remediation.** Sublessee will not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or storm drains, drains, or any other drainage facility within the Premises or adjacent streets, or sanitary sewer system) and will promptly, at Sublessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Sublessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the Term of this Sublease, by or for Sublessee, or any third party. Sublessee must comply, at its sole cost, with all applicable laws pertaining to Hazardous Materials (the "Environmental Laws"), including but not limited to the preparation of business plans pursuant to Health & Safety Code Section 25500 et seq., to the extent applicable to Sublessee. It will be the sole obligation of Sublessee to obtain any permits and approvals required for the operation of Sublessee's business pursuant to the Environmental Laws. Sublessee will prevent any action by or on behalf of Sublessee, Sublessee's employees and agents and invitees that will cause the Premises to be in violation of, or will subject the Premises to any remedial obligations under Federal, State or Local environmental laws, rules, regulations, or ordinances. To the extent required by applicable law, Sublessee will maintain Material Safety and Data Sheets for each and every item or product containing Hazardous Material brought onto the Premises as required by applicable Environmental Laws. Such information, if required, will be kept current at all times.

(e) **Sublessee Indemnification.** Sublessee will indemnify, defend and hold City, its agents, employees, and lenders, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Sublessee, or any third party (provided, however, that Sublessee shall have no liability under this Sublease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Sublessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Sublessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Sublease. No termination, cancellation or release agreement entered into by City and Sublessee shall release Sublessee from its obligations under this Sublease with respect to Hazardous Substances, unless specifically so agreed by City in writing at the time of such agreement.

(f) **City Indemnification.** City and its successors and assigns will indemnify, defend, reimburse and hold Sublessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which exist on the Premises as a result of Hazardous Substances caused by the sole gross negligence or willful misconduct of City, its agents or employees. City will not under any circumstance be liable for any Hazardous Substances for which Sublessee is liable under paragraph (e) above. City's obligations, as and when required by applicable laws, will include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and will survive the expiration or termination of this Sublease.

18. Default.

(a) **Default.** Any of the following will constitute a default by Sublessee under this Sublease:

(i) Sublessee's failure to pay Rent or any other charge under this

Sublease within 7 days after it is due.

(ii) Sublessee's failure to observe or perform any of the covenants, conditions or provisions of this Sublease to be observed or performed by Sublessee, including but not limited to obligations imposed under the Master Lease and the REA, other than described in subsection (a)(i), above, where such failure continues for a period of thirty (30) days after written notice hereof from City to Sublessee; provided, however, that if the nature of Sublessee's default is such that more than thirty (30) days are reasonably required for its cure, then Sublessee will not be deemed to be in default if Sublessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion; or failure to comply with any other term or condition imposed under this Sublease, the Master Lease, or the REA, within 30 days following written notice from City specifying the noncompliance.

(iii) Sublessee's insolvency, business failure or assignment for the benefit of its creditors. Sublessee's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer; or the appointment of a receiver for all or any portion of Sublessee's properties or financial records.

(iv) Sublessee's abandonment of the Premises.

(b) **Remedies.** In the event of a default or breach, City may, with or without further notice or demand, and without limiting City in the exercise of any right or remedy which City may have by reason of such breach:

(i) Terminate Sublessee's right to possession of the Premises by any lawful means, in which case this Sublease will terminate and Sublessee must immediately surrender possession to City. In such event City will be entitled to recover from Sublessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Sublessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the Sublessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate City for all the detriment proximately caused by the Sublessee's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by City in connection with this Sublease applicable to the unexpired Term of this Sublease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence will be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). Efforts by City to mitigate damages caused by Sublessee's breach of this Sublease will not waive City's right to recover damages hereunder. If termination of this Sublease is obtained through the provisional remedy of unlawful detainer, City will have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or City may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required above, was not previously given, a notice to pay rent or quit, or to perform or quit given to Sublessee under the unlawful detainer statute will also constitute the notice required above. In such case, the applicable grace period required above and the unlawful detainer statute will run concurrently, and the failure of Sublessee to cure the Default within the greater of the two such grace periods will constitute both an unlawful detainer and a breach of this Sublease entitling City to the remedies provided for in this Sublease and/or by said statute.

(ii) Continue the Sublease and Sublessee's right to possession and recover the Rent as it becomes due, in which event Sublessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the City's interests, will not constitute a termination of the Sublessee's right to possession.

(iii) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state of California. The expiration or termination of this Sublease and/or the termination of Sublessee's right to possession will not relieve Sublessee from liability under any indemnity provisions of this Sublease as to matters occurring or accruing during the Term hereof or by reason of Sublessee's occupancy of the Premises.

(c) City may make any payment or perform any obligation which Sublessee has failed to perform, in which case City will be entitled to recover from Sublessee upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of 10 percent per annum. Any such payment or performance by City will not waive Sublessee's default.

19. Surrender. On expiration or early termination of this Sublease Sublessee will deliver all keys to City and surrender the Premises, subject only to reasonable wear and tear from ordinary use, and the removal of any attached fixtures by Sublessee to which Sublessee is entitled under this Sublease. Sublessee must remove all of its furnishings and movable trade fixtures installed by Sublessee.

20. Holding Over. If Sublessee, without City's consent, remains in possession of the Premises or any part thereof after the expiration of the Term hereof, then such occupancy will be a tenancy from month to month upon all the provisions of this Sublease pertaining to the obligations of Sublessee, except at a rent equal to one hundred twenty five percent (125%) of the sum of the rents otherwise due under this Sublease, if and as applicable, immediately prior to the expiration of the Term hereof. The foregoing provisions are in addition to and do not affect City's right of re-entry or any other rights or remedies of City hereunder or as otherwise provided at law or in equity, or both. Sublessee will indemnify, defend and hold City harmless from and against any and all losses, costs, damages and liabilities (including attorneys' fees and costs, and court costs) arising out of or in connection with any delay by Sublessee in surrendering and vacating the Premises, including, without limitation, any claims made by any succeeding tenant based on any delay and any liabilities arising out of or in connection with these claims, and City's damages should any such succeeding tenant cancel its sublease based upon such holding over by Sublessee. Nothing in this Section will be deemed to permit Sublessee to retain possession of the Premises after the expiration or sooner termination of the Term.

21. Notices. Notices between the parties relating to this Sublease will be in writing (including but not limited to e-mail communication), effective when delivered, or if mailed, effective on the third business day following mailing, postage prepaid, to the address for the party stated in this Sublease or to such other address as either party may specify by notice to the other. Notice to Sublessee may always be delivered to the Premises. Rent is payable to City at the same address and in the same manner.

22. Dispute Resolution. The Parties agree to meet and confer concerning all claims, disputes or other matters in question between the Parties arising out of or relating to this Sublease or breach thereof prior to the institution of any litigation.

23. Successors. Notwithstanding any other provision herein, all the terms, covenants and conditions of this Sublease will be binding upon and will inure to the benefit of the successors and assigns of the Parties.

24. Estoppels. Either Party will within 15 days after notice from the other execute, acknowledge and deliver to the other Party a certificate certifying whether or not this Sublease has been modified and is in full force and effect; whether there are any modifications or alleged breaches by the other Party; the dates to which r=Rent has been paid in advance, and the amount of any prepaid Rent; and any other facts that may reasonably be requested. Failure to deliver the certificate within the specified time will be conclusive upon the Party of whom the certificate was requested that this Sublease is in full force and effect and has not been modified except as may be represented by the Party requesting the certificate. If requested by the holder of any encumbrance, Sublessee will agree to give such holder or City notice of and an opportunity to cure any default by City under this Sublease.

25. Attorneys' Fees. In any litigation arising out of this Sublease, the prevailing party will be entitled to recover reasonable attorney's fees at trial and on any appeal.

26. Master Lease; Reciprocal Easement Agreement. This Sublease is subject to the terms and conditions of the REA and the Master Lease. To the extent of any conflict between the terms and conditions in this Sublease and the terms and conditions of the Master Lease, the terms and conditions of the Master Lease will control; and to the extent of any conflict between the REA and either the Master Lease or this Sublease, the REA will control.

27. [Reserved]

28. Miscellaneous.

(a) **Complete Agreement; No Implied Covenants.** This Sublease and attachments constitutes the entire agreement of the parties and supersede all prior written and oral agreements and representations and there are no implied covenants or other agreements between the parties except as expressly set forth in this Sublease. Neither City nor Sublessee is relying on any representations other than those expressly set forth herein.

(b) **Space Subleased As Is.** The Premises are subleased AS IS in the condition now existing with no alterations or other work to be performed by City.

(c) **Time of Essence.** Time is of the essence of this Sublease.

(d) **Counterparts.** This Sublease may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

(e) **Captions.** The titles to the sections of this Sublease are descriptive only and are not intended to change or influence the meaning of any section or to be part of this Sublease.

(f) **Nonwaiver.** Failure by City to promptly enforce any regulation, remedy or right of any kind under this Sublease will not constitute a waiver of the same and such right or remedy may be asserted at any time after City becomes entitled to the benefit thereof notwithstanding delay in enforcement.

(g) **Inability to Perform; Force Majeure.** This Sublease and the obligations of Sublessee hereunder will not be affected or impaired because City is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike or other labor troubles, governmental preemption of priorities or other controls in connection with a national or other public emergency, or shortages of fuel, supplies or labor resulting therefrom, or act of God, or any other causes beyond the reasonable control of City. If this

Sublease specifies a time period for performance of an obligation of City or Sublessee, that time period will be extended by the period of any delay in City's or Sublessee's performance caused by any of the events of force majeure described above.

(h) **Entry and inspection.**

(i) Sublessee agrees that the City, its agents and employees, may enter upon the Premises at any reasonable time, following reasonable notice to Sublessee, for the purpose of making inspections, surveys and measurements and performing other work considered necessary by the City, including but not limited to ensuring that Sublessee is in compliance with all provisions of this Sublease, all with the understanding that the same will be performed in such a manner as will cause a minimum of interference with Sublessee's use of the Premises. City agrees to provide Sublessee with reasonable prior notice of any such entry and inspection. Such inspections may be made by City employees authorized to conduct such inspections or by independent contractors engaged by City.

(ii) Sublessee waives any claim for damages for any injury or inconvenience to, or interference with, Sublessee's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss caused by the entry of the City as described herein, and Sublessee agrees that there will be no abatement of Rent by reason of the City's entry for the purposes described in this section.

(iii) The City will at all times have and retain a key with which to unlock all of the gates (if any) in the Premises and the City will have the right to use any and all means that it may deem reasonable and proper to open such doors in emergencies in order to obtain entry into the Premises. Any entry into the Premises obtained by the City by any means whatsoever will not under any circumstances be deemed a forcible or unlawful entry into, or detainer of, the Premises, nor will such entry be construed to be an eviction of Sublessee from any part of the Premises. The City will give Sublessee such notice as is reasonable under the circumstances before and after entry into the building on the Premises due to any emergency.

(i) **No Discrimination.** Sublessee herein covenants by and for itself, its successors, and assigns, and all persons claiming under or through it, and this Sublease is made and accepted upon and subject to the conditions that there will be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein subleased nor will the Sublessee itself, or any person claiming under or through it, 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, of sublessees or vendees in the Premises herein subleased.

(j) **No Joint Venture.** Nothing contained in this Sublease will be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent, a partnership or joint ventures between City and Sublessee. It is understood and agreed that neither any provisions contained in this Sublease nor any acts of City or Sublessee will be deemed to create any relationship between City and Sublessee other than the relationship of landlord and tenant.

(k) **Waiver of claims.** Sublessee hereby irrevocably waives on behalf of itself, its successors and assigns and all persons claiming through it, any claim which Sublessee may assert against the City for inverse condemnation, relocation payment or, compensation for fixtures and equipment, and/or any other costs, expenses, or claims not specifically listed herein incurred by Sublessee in connection with any termination, either by operation of law or otherwise, of this

Sublease. Sublessee specifically acknowledges that this Sublease may be pleaded as a defense and a bar to any such claim. Sublessee further specifically acknowledges that in making this waiver, Sublessee has consulted with its attorney and that this waiver is made freely and with knowledge of the character and extent of the rights thus waived.

(l) **Governing Law; Partial Invalidity.** This Sublease and the rights and liabilities of the Parties to this Sublease will be governed by the State of California. If any term or provision of this Sublease or application of this Sublease to any person or circumstance is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Sublease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected by such invalidity or unenforceability, and each term and provision of this Sublease will be valid and enforced to the fullest extent permitted by law.

(m) **No Interpretation Against Draftsman.** City and Sublessee hereby agree that no provision of this Sublease will be construed against either Sublessee or City on the basis that the provision was drafted by such party or such party's counsel.

[Signatures on following page]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Sublease as of the day and year first written above.

CITY:

THE CITY OF BURBANK,
a municipal corporation and charter city

By: _____
Justin Hess
Title: City Manager

Attest:

City Clerk

Approved as to Form:

Jill Vander Borght
Senior Assistant City Attorney

Address for Notices:

DRAFT 12/19/22

SUBLESSEE:

By: *****

Address for Notices:

Exhibit A
Master Lease

DRAFT

Exhibit B
Goals and Objectives
Years ### - ###

DRAFT

Exhibit C
City's Tenant Improvements

DRAFT

EXHIBIT H

Master Lease City of Burbank and Media City Center

The attached Master Lease does not reflect the new ownership change.

This will be updated as soon as practical.

EXHIBIT H

SUBLEASE AGREEMENT AND MASTER LEASE MODIFICATION

This SUBLEASE AGREEMENT AND MASTER LEASE MODIFICATION (this "Sublease") is made and entered into this 22nd day of November, 2006, by and among Burbank Mall Associates, LLC, successor in interest to C. T. Operating Partnership, L.P., a California limited partnership formerly known as the Alexander Haagen Properties Operating Partnership L.P, successor in interest to The Haagen-Burbank Partnership, a California general partnership ("Landlord"), the City of Burbank, a municipal corporation and Charter City ("City"), and The Colony Theatre Company, a California non profit public benefit corporation ("Sublessee"), with reference to the following facts and circumstances:

RECITALS:

A. On November 15, 1989, the Redevelopment Agency of the City of Burbank entered into a Disposition and Development Agreement (the "DDA") with Landlord for a multi-use development, commonly referred to as the Media City Center. As part of the DDA, Landlord is required to devote a portion of the development to a community facility for the City.

B. The City entered into a lease dated April 7, 1992 (the "Master Lease") with Landlord, which is incorporated herein by this reference, for the operation of a cultural facility of the City and the lease of certain premises (the "Premises"). Pursuant to Section 7.01 of the Master Lease, City, as Tenant, is permitted "the right to use the Premises for the operation of a cultural facility of the City of Burbank, which provides educational, cultural, social and recreational activities to the general public."

C. Through the Master Lease, City further received approval from Landlord to sublet the Premises to the Los Angeles County Natural History Museum Foundation ("Museum"). On March 30, 1992, a Sublease Agreement (the "Museum Sublease") by and among the City, the Museum, and Landlord, was executed. The Museum Sublease was terminated on or about January 1, 1996.

D. In March of 2000 the City Council approved the Sublease Agreement and Master Lease Modification ("Sublease") that provided for occupancy of the cultural facility by the Colony Theater, non-profit, tax-exempt theater company.

E. The term of the Sublease was for five years and was to expire in August 2005. The City Council approved three extensions to the Sublease, which now expires on November 30, 2006.

F. The City, Landlord, and Sublessee now desire to enter into a new five year Sublease Agreement and Master Lease Modification and to that end have entered into this Restated and Amended Sublease Agreement and Master Lease Modification.

G. Concurrently herewith and as a condition precedent hereto, City and Sublessee have entered into a new Theater Operating Agreement (as the same may be amended, modified or restated from time to time, the "Operating Agreement"), a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by this reference, pursuant to which Sublessee has agreed, among other things, to provide reasonable access to community groups located in the City of Burbank and operating under the auspices of the Department of Park, Recreation and Community Services, upon the terms and conditions set forth therein.

H. Sublessee is a California non-profit public benefit corporation, organized under California's Nonprofit Public Benefit Corporation Law for public and charitable purposes, with

Exhibit "A" and incorporated herein by this reference, pursuant to which Sublessee has agreed, among other things, to provide reasonable access to community groups located in the City of Burbank and operating under the auspices of the Department of Park, Recreation and Community Services, upon the terms and conditions set forth therein.

H. Sublessee is a California non-profit public benefit corporation, organized under California's Nonprofit Public Benefit Corporation Law for public and charitable purposes, with the specific purpose of presenting fully-mounted productions for the public of plays generally recognized to be of significant artistic and/or social value, with federal tax exemption under Internal Revenue Code Section 501(c) (3), and California franchise tax exemption under Revenue and Taxation Code Section 23701d.

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

AGREEMENT:

1. **Sublease.** City hereby subleases unto Sublessee and Sublessee hereby accepts from City the Premises. This Sublease shall be subject to all of the terms and conditions of the Master Lease, as the same is modified herein, and, except as set forth herein, Sublessee shall assume and perform the obligations of City as tenant in the Master Lease, and comply with all of the terms and conditions of said Master Lease as if it were Tenant thereunder, except as provided herein. Further, this Sublease is subject to the Development Agreement for Planned Development No. 89-4 dated November 15, 1989 between Landlord's predecessor and City, as amended by that certain First Amendment to Development Agreement dated December 6, 1990 (as amended, the "Development Agreement"); that certain First Amended and Restated Construction, Operation and Reciprocal Easement Agreement dated December 6, 1990 by and among Landlord's predecessor and various tenants of the shopping center (the "Shopping Center") in which the Premises is located (the "Reciprocal Easement Agreement"); and the provisions of the Burbank Municipal Code, including, but not limited to, zoning restrictions.

2. Term and Extension of Term.

(a) **Term.** The term (the "Term") of this Sublease is for five years and shall commence on December 1, 2006, subject to early termination upon breach of the terms of the Operating Agreement and renewal as herein provided.

(b) **Extension of Term.** Sublessee shall have the right to extend the Term for three (3) separate and successive periods of five (5) years each from the date upon which the Term would otherwise expire, upon the same terms and conditions as the terms herein specified. However, with the approval of the City Council, the parties hereto may agree to amend, modify, or eliminate any of the terms or conditions. Additionally, the parties shall agree to new Goals and Objectives for each extension of the Term of this sublease. Each such extension shall be made by Sublessee giving City written notice of such extension at least six (6) months prior to the date this Sublease would otherwise have expired, and in the event of an extension, the Term

shall continue for such extension period, subject, however, to earlier termination as hereinafter set forth.

Once Sublessee makes a request for any extension of Term, the extension shall be granted upon determination by the Director of the Park, Recreation and Community Services Department (hereafter, the "Director") that Sublessee is in substantial compliance with the Goals and Objectives provided for in Exhibit 1 to the Operating Agreement (hereafter, the "Goals"). Such Goals shall be subject to annual review and revision, as provided in the Operating Agreement. Notwithstanding the foregoing, Sublessee shall not have the right to request an extension of the Term if, at the time Sublessee requests the extension, Sublessee (a) has created an uncured Event of Default under the provisions of this Sublease, the Master Lease or the Operating Agreement, (b) has failed to exercise its option by giving the required notice, or (c) is not then operating the Premises as a live performance theater.

(d) **Notice and Dispute Resolution.** The Director shall give written notification to Sublessee within 15 calendar days after receipt of the request for Extension whether or not, in the discretion of the Director, Sublessee is in substantial compliance with the Goals. This notification shall be personally delivered to Sublessee's Manager at Sublessee's business address. If the Director's determination is favorable, the Extension shall be granted. If Director determines that Sublessee is not in substantial compliance with the Goals and Sublessee disagrees, Sublessee shall have the right, within three (3) calendar days of receipt of the Director's decision, to make a written request, personally delivered, for a meeting with Director. The meeting shall be held within ten (10) calendar days of the request. During this meeting, Sublessee and Director shall specifically discuss why Director believes Sublessee is not in substantial compliance with the Goals, and attempt to reach a compromise, including, but not limited to, allowing Sublessee a reasonable period to cure any deficiencies. If Director and Sublessee are unable to resolve the issue at the meeting, then Sublessee may appeal the Director's decision to the members of the Department of Park, Recreation and Community Services Board (the "Board.") Such appeal shall be effectuated by Sublessee delivering written notice, within ten (10) days of the meeting, to the Chairman of the Board. The appeal process shall be a public forum, which will take place no later than fifteen (15) days after the delivery of the written notice to the Chairman of the Board. At the appeal, Sublessee shall be permitted to make a thirty (30) minute presentation, followed by a thirty minute (30) response from the Director, followed by a ten (10) minute rebuttal from Sublessee. The Board may then consider public opinion. The Board shall render a written decision within ten (10) days of the date of the appeal. Either the Director or Sublessee may then request that the determination of the issue of substantial compliance with the Goals be submitted to a competent and disinterested arbitrator, to be selected as provided herein.

(e) **Cost of Arbitrator.** The cost of the arbitrator shall be borne equally by the City and Sublessee. The arbitrator selected shall conduct a hearing within thirty (30) calendar days of his or her selection, unless the parties stipulate otherwise. The hearing may be conducted by submission of written briefs, declarations, and affidavits. Except for the Sublessee and the Director or her designee, oral testimony shall not be allowed. If the Sublessee or the Director or her designee offers testimony relating to factual matters other than in argument, they shall be subject to cross-examination by the other party. The Sublessee or the Director or her designee shall be allowed the opportunity to rebut any testimony relating to factual matters directly or

through one additional witness. The arbitrator shall issue a letter award within ten (10) calendar days of the hearing. The decision of the arbitrator shall be binding. The arbitrator's authority shall not extend to any issue in this Sublease other than the issue of the Sublessee's substantial compliance with the Goals established in Exhibit C to the Operating Agreement. Should arbitration proceedings continue beyond the termination date, Sublessee may continue operations until such time as arbitration proceedings have been concluded.

(f) **Arbitration Panel.** In order to provide for arbitration as provided herein the parties agree, that within 15 calendar days from the meeting referred to in 2(d) above, to select a panel of arbitrators consisting of 9 individuals. In the event that the parties cannot agree upon an arbitration panel, they will request a list of 9 arbitrators from the American Arbitration Association, and that list shall serve as the panel. Any cost incurred in obtaining the list of arbitrators from the American Arbitration Association shall be borne equally by the parties. The parties shall then attempt to mutually agree upon an arbitrator, and, if they cannot agree within 15 calendar days, shall each alternately strike names from the panel of 9 arbitrators until one name remains. The final arbitrator's name remaining on the list shall arbitrate the dispute. The order of striking shall be determined by a coin toss. The arbitrator shall be notified of his or her selection by a joint letter from the parties requesting that he or she set a time and place to hear the matter within 30 calendar days.

3. Rent.

(a) Subject to the provisions of this section, from and after the Opening Date, during the Term Sublessee shall pay City \$1,500 per month, in advance, as rent hereunder, payable quarterly and due on the fifteenth (15th) day of the first month of each quarter. The amount of rent due, or any installment thereof, shall be reduced by the amount of any expenditure accrued and or accumulated as of the date of payment which is made by Sublessee (1) to complete Tenant Improvements and provide certain theatrical equipment for the Premises; (2) as direct and quantifiable costs incurred to support use of the Premises by community groups; and (3) for maintenance and repair items which are the responsibility of the City under the terms of the Sublease. These expenditures must be approved in writing by the Director of the Department of Park, Recreation and Community Services prior to rent credit being given, and any equipment, capital item or fixture for which Sublessee receives rent credit will become the property of the City or Landlord, as set forth in the Master Lease.

(b) Rent shall be paid to City when due without prior notice or demand, deduction, setoff, or counterclaim whatsoever, except as agreed in writing pursuant to Section 4(a) at the address set forth below.

(c) Failure to submit the payments or rent credits within fifteen days of the due date shall result in late charges of five dollars (\$5.00) per day for the first fifteen (15) days after the date upon the payments are due. The late charges will increase to Twenty Dollars (\$20.00) a day for each day after the first fifteen (15) days past the due date.

(d) Landlord acknowledges and agrees that City's rent to Landlord pursuant to the Master Lease is and shall remain \$1.00 a year, notwithstanding that Sublessee is paying rent in excess thereof to City hereunder.

(e) At the commencement of each additional Term, the rent amount may be adjusted at the discretion of the City in the same proportion as the increase, if any, in the Consumer Price Index for All Urban Consumers U.S. City Average, all Items, published by the United States Department of Labor, Bureau of Labor Statistics, with respect to the same time period.

4. **Utilities.** Sublessee shall be obligated to pay any and all costs and expenses associated with all utilities for the Premises, including without limitation, electricity, water, cable TV (including any hook-up fees), natural gas and telephone. Sublessee acknowledges that some or all of the utilities serving the Premises may be provided by Landlord, and will be separately metered and/or billed as to the Sublessee's use thereof at the same rate charged Landlord by the utility company.

5. **Maintenance.**

(a) **Landlord Responsibility.** Landlord shall comply with its obligations of maintenance and repair relative to the Premises as stated in the Master Lease including, without limitation, Section 13.01 (Landlord's Duty), provided however, that Landlord shall have no obligation or responsibility to repair, maintain, or replace any improvements or work of construction installed or performed by City in or to the Premises pursuant to Section 3 hereinabove.

(b) **City Responsibility.** City shall comply with its obligations of maintenance and repair relative to the Premises as stated in the Master Lease including, without limitation, Section 13.02 (Tenant's Duty). In addition, the City shall be responsible for any and all improvements and maintenance necessary for compliance with applicable laws (including, without limitation, the Americans with Disabilities Act), and for maintenance related to the HVAC and heating equipment, for the pipes and conduits serving the Premises (including those contained between the exterior and interior walls), and for maintenance related to the elevator. City shall also be responsible for capital repair of those tenant improvements which have been made by Sublessee on behalf of the City, for which Sublessee has received written approval from the City upon completion, and for which the City agrees rent credit is due, pursuant to paragraph 4 (a) of this Sublease.

(c) **Sublessee Responsibility.** Sublessee shall be responsible for non-capital repair and replacement, and general cleaning and maintenance in the Premises of such interior items as carpet, seat covers and paint, necessary from time to time to maintain a clean and professional appearance consistent with the use of the Premises as a live performance theater. During Sublessee's occupancy of the Premises, Sublessee shall be responsible for repair, replacement and maintenance of all improvements made in and to the Premises by Sublessee (whether of a capital or non-capital nature), except capital repair of those tenant improvements made expressly the responsibility of the City in paragraph 6(b) above. Sublessee shall provide timely notice to City and/or Landlord, as applicable, of any repairs of which Sublessee is aware the responsibility for which is City's or Landlord's.

6. **Indemnification.** Sublessee agrees to defend, indemnify and hold Landlord and City, and their respective partners, officers, agents and employees, free and harmless from every claim, demand, damage or action, and any cost or expense in connection therewith, that may arise in any manner out of Sublessee's operations conducted on or about the Premises, including but not limited to Sublessee's after-hours use of the Premises, except to the extent any such claim, demand, damage or action arises from the gross negligence or willful misconduct of any such indemnified party or its respective officers, agents or employees.

7. **Insurance.** Landlord acknowledges the City is self-insured and approves of same, notwithstanding Section 11.01 of the Master Lease. Landlord shall maintain insurance in accordance with Section 11.02 of the Master Lease. Sublessee shall maintain the following insurance coverage throughout the term of this Sublease, and upon request Sublessee shall show City and Landlord evidence of such coverage, and Sublessee shall require its contractors, its subcontractors, etc. to carry and provide evidence of such coverage:

(a) **Workers' Compensation Insurance:** Workers' compensation insurance and employer's liability insurance on any employees of Sublessee.

(b) **General Liability and Property Damage Insurance:** Sublessee shall maintain general liability insurance and property damage insurance covering the Premises for the activities and audiences of Sublessee and its sublessees, if any, such insurance to afford protection to a limit of at least \$2,000,000 for injury to or death of any number of persons arising out of any one occurrence, and at least \$2,000,000 for any occurrence of property damage with an annual aggregate of at least \$2,000,000, naming City, Landlord and Landlord's Lender, if requested by Landlord, as an additional insured on a separate endorsement to the insurance policy. The endorsement shall require the insurance company to provide City and Landlord a minimum of ten (10) days' notice of the cancellation of the policy. The policy shall specify that such insurance is the primary insurance. The policy shall be issued by an insurance company that is admitted to business in the State of California.

(c) **Recovery from Sublessee's Insurance:** Sublessee agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Sublessee shall look solely to its insurance for recovery, to the extent of availability of such insurance.

(d) **Self-Insured Retention:** The insurance policies acquired by Sublessee shall not require payment of any self-insured retention by Sublessee as a condition precedent to the City's coverage or payment for loss otherwise covered under the required liability insurance herein.

(e) **Additional Insured:** The naming of City and/or Landlord and its management agent as additional insured shall not affect any recovery to which City and/or Landlord and its management agent would be entitled under any policy if not named as an additional insured and City and/or Landlord and its management agent shall not be held liable for any premium or expense of any nature on any policy or any extension thereof. Any other insurance held by City and/or Landlord and its management agent shall not be required to contribute toward any loss or expense covered by the insurance proceeds provided by this policy.

Proceeds from any policy or policies shall be payable to City and/or Landlord and its Lender, if requested by Landlord primarily, and to Sublessee secondarily, if necessary.

(f) **Evidence of Insurance:** Sublessee shall furnish Certificates of Insurance and separate endorsements evidencing the required coverages or the original of the insurance policies for review by the Director of the Park and Recreation Department and approval by the City Attorney's office and Landlord prior to beginning performance under this Sublease. Neither City nor Landlord shall be required to obtain insurance for any of Sublessee's property or improvements installed by Sublessee on the Property, all such insurance to be maintained by Sublessee and any and all proceeds therefrom to be and remain the property of Sublessee.

8. **Nondiscrimination Clause.** Sublessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this Sublease is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, religion, creed, national origin, or ancestry, in the leasing, renting, use, occupancy, tenure or enjoyment of the Premises, nor shall Sublessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number or occupancy of tenants, lessees, sublessee, subtenants, or vendees in the Premises.

9. **Sublessee Improvements.** It is understood that Sublessee will be purchasing and/or bringing furniture, fixtures and equipment (including, without limitation, lighting and audiovisual equipment) to the Premises. Notwithstanding any provision of the Master Lease (including, without limitation, Section 2.05 (Ownership of Improvements) and Article 11 (Fixtures and Personal Property) or this Sublease, in the event of a termination or surrender of the Master Lease or this Sublease for any reason (including, without limitation, Sublessee's default hereunder), all furniture, fixtures and equipment purchased by Sublessee and/or brought to the Premises, even if affixed to the Premises, shall be and remain owned by and shall be the exclusive property of Sublessee, provided that such property is removed from the Premises, at Sublessee's sole cost and expense, within forty (40) days of any such termination or surrender, provided further that Sublessee shall be obligated to repair the Premises after it removes any such property so affixed to the Premises. Any such property not removed from the Premises in accordance with this paragraph shall become the exclusive property of the City and/or Landlord, subject to the provisions of the Master Lease. Sublessee shall not make any capital improvements, structural modifications or structural additions to the Premises without the prior written approval of the Director of the Park and Recreation Department, and if required under the Master Lease, the Landlord; provided, however that the foregoing shall not require Sublessee to obtain approval for any sets constructed in connection with Sublessee's theatrical productions.

10. **Operation of Premises; Permitted Uses.** During Sublessee's occupation of the Premises pursuant hereto, Sublessee shall occupy and operate the Premises as a live performing arts center, including its ancillary functions, in accordance with the Operating Agreement. City and Landlord agree that any admission fees or other charges and income of Sublessee shall remain the sole property of Sublessee. Landlord and City acknowledge and agree that in connection with the operation of the Premises as a theater, Sublessee may engage in related income generating activities in support of its primary tax exempt purpose as permitted and limited by the Internal Revenue Service, the Attorney General of the State of California, and the

permitted uses of the Premises as described in Section 7.01 of the Master Lease and the REA, pursuant to which Sublessee may operate or cause to be operated a concession operation (up to a maximum of 500 square feet of the Premises) for the display and sale of coffee, cookies, pre-packaged sandwiches, and other food items, as well as T-shirts, memorabilia, and other items. Additionally, if a beer & wine or other liquor license is lawfully obtained (and Sublessee obtains alcohol liability insurance), Sublessee may sell alcoholic beverages to the extent permitted by such license. Sublessee shall have year-round, 24-hour access to the Premises; provided, however, that access after 2:00 a.m. is conditioned upon Sublessee either providing Landlord with 24 hours written notice of Sublessee's intent to access the premises during such extended hours OR Sublessee's having provided sufficient security lighting in the parking area adjacent to the Premises (placement of which is subject to Landlord's sole discretion and prior approval) and notifying Landlord's Security Offices when employees intend to remain after 2:00AM. Sublessee will pay its proportionate share of any increased costs incurred by Landlord at Sublessee's request relative to the common areas in the Shopping Center (including, without limitation, the cost of installation or otherwise providing additional lighting and/or security). Notwithstanding anything to the contrary contained in this Section 11 or this Agreement, Sublessee acknowledges that Landlord shall have no responsibility for the provision on behalf of Sublessee of any security or lighting services in the common areas in the Shopping Center during extended hours operation/access in and to the Premises by Sublessee where Sublessee remains open during such extended hours without having provided Landlord with at least 48 hours prior written notice of Sublessee's intent to access the premises during such extended hours.

11. Sublessee's Location. Landlord agrees to designate Sublessee's location in Landlord's mall directory at no cost or expense to Sublessee.

12. Landlord Cooperation. During the Term, from time to time (subject to Landlord's prior approval relative to length and times of display and size), Sublessee shall have the nonexclusive right to display theater exhibits or conduct other promotional activities (of which Landlord has given its prior approval) in the Shopping Center common area to the extent such area is not already being used. In addition, Landlord's information booth in the Shopping Center will be available on a nonexclusive basis for provision of general information regarding performances at the Premises. Landlord agrees to repaint, at its sole cost and expense, directions to the Premises displays in the parking garage, as well as a "path" of painted logos on the garage floor and exterior walls in the Shopping Center. Landlord shall substitute the name and logo, as appropriate, of the former subtenant with the name or logo of Sublessee, using the name "Burbank Center Stage" or "Center Stage" and the logo submitted to Landlord by Sublessee, which logo shall be subject to Landlord's reasonable review and approval as to style, size, and color. Sublessee's signage shall otherwise conform to Landlord's "Sign Criteria" attached hereto as Exhibit "C" and incorporated herein by reference. Sublessee's name may, subject to any approvals of Landlord and as required by the Reciprocal Easement Agreement, be displayed on the exterior of the building containing the Premises, as:

**BURBANK CENTER STAGE
HOME OF THE COLONY THEATRE COMPANY**

13. Parking. Subject to Landlord's rules and regulations in the Shopping Center, Sublessee's guests and invitees shall have the right to park in any of the public/customer parking areas in the Shopping Center.

14. Master Lease.

(a) **Terms.** All the terms used herein, which are defined in the Master Lease, shall have the respective meanings ascribed thereto in the Master Lease, as modified hereby. All of the terms and conditions contained in the Master Lease are incorporated herein as terms and conditions of this Sublease (except that in the event of any inconsistency between this Sublease and the Master Lease, the terms and conditions of this Sublease shall govern).

(b) **Master Lease Modifications.** From and after the Effective Date, all references in the Master Lease to (a) "the Los Angeles County Natural History Museum" or the "Museum" shall be and shall be deemed to be references instead "The Colony Theatre," and (b) the "Sublease" shall be and shall be deemed to be references to this Sublease.

(c) **Landlord Acknowledgment.** Landlord acknowledges and agrees that Sublessee's operations at the Premises, as described in the Operating Agreement and this Sublease, are permitted uses of the Premises in compliance with the requirements of the Master Lease (including, without limitation, Section 7.01 (Use)).

(d) **Master Lease Term.** The parties hereto each acknowledge and agree that the term of the Master Lease expires on November 14, 2044, unless otherwise extended in accordance therewith. For the Term of this Sublease (as the same may be extended pursuant hereto), Landlord hereby waives, cancels and releases any and all rights to terminate the Master Lease upon City's exercise of any right to extend the Master Lease Term (including, without limitation, pursuant to Section 3.02 of the Master Lease).

(e) **Default Under Master Lease.** Sublessee and City each agree to take no action that would create a default by City under the Master Lease. If City shall default under the Master Lease or reject the Master Lease in a bankruptcy proceeding or if any other event shall occur that would permit Landlord to terminate the Master Lease (or accept a surrender or termination of the Master Lease by City) or exercise any other rights or remedies under the Master Lease (any such event, a "City Default") and City shall fail to cure such City Default within any applicable grace period provided in the Master Lease, Landlord shall (a) promptly give written notice of such City Default to Sublessee, and (b) not terminate or accept a surrender of the Master Lease or otherwise enforce any of its rights or remedies under the Master Lease as a result of such City Default unless such City Default shall not have been cured within 30 days after receipt of such notice by Sublessee.

(f) **Termination of Master Lease.** If the Master Lease shall for any reason be terminated or rejected prior to the expiration of the Term hereof, whether by reason of a default by City, a bankruptcy or otherwise (regardless of whether Sublessee exercised its right to cure pursuant to the immediately preceding section hereof, (a) Landlord shall promptly give written notice of such termination or rejection to Sublessee, and (b) upon request by Sublessee within 30 days after receipt of such notice, Landlord shall enter into a new lease relative to the

Premises with Sublessee on substantially the same terms and conditions as are set forth herein for the duration of the Term hereof (as the same may be extended pursuant hereto). The obligation of Landlord to enter into any such new lease shall be subject only to payment by Sublessee of all past due rent and other amounts accrued under the Master Lease prior to the date of termination and the cure by Sublessee of any non-monetary terms which are reasonably capable of being cured by Sublessee.

(g) **Amendment of Master Lease.** At least ten (10) days prior to any amendment of the Master Lease, Landlord and City shall provide written notice to Sublessee of the amendment. If the parties determine that the amendment will have a material affect upon Sublessee's rights pursuant to this Sublease or the Theater Operating Agreement, then the amendment cannot be entered into without Sublessee's prior written consent, which consent shall not be unreasonably withheld.

15. Termination. This Sublease may be terminated by the City upon the occurrence of any of the following events:

- (a) Any breach of this Sublease or the Operating Agreement by the Sublessee which remains uncured for a period of thirty (30) days after written notice from the City; or
- (b) Appointment by court order of a receiver, liquidator or trustee for the Sublessee or the filing of a petition to liquidate or reorganize the Sublessee by a third party under any bankruptcy, reorganization or insolvency law, which order or petition is not vacated or dismissed within 90 days, or the filing by the Sublessee by a petition in bankruptcy, reorganization or insolvency laws, or an assignment by the Sublessee for the benefit of creditors or the adjudication of the Sublessee as a bankrupt, or as an insolvent company, which remains uncured for a period of thirty (30) after written notice from the City.

16. General Terms:

(a) **Entire Agreement.** This Sublease and the Operating Agreement contains the entire agreement of the parties hereto and supersedes any prior written or oral agreement between them respecting the subject matter contained herein. There are no other representations, agreements, arrangements, or other understandings, oral or written, between the parties hereto respecting the subject matter contained herein which are not fully expressed herein.

(b) **Titles and Headings; Context.** Titles and headings to paragraphs in this Sublease are for the purpose of reference only and shall in no way limit, define, or otherwise affect the provisions of it. When the context so indicates in this Sublease, the singular includes the plural; the plural includes the singular and the masculine includes the feminine and neuter.

(c) **Incorporation by Reference.** Every exhibit, schedule, and other appendix attached to this Sublease and referred to herein is hereby incorporated in this Sublease by reference.

(d) **Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute the same instrument.

(e) **Assignment and Subletting.** The restrictions on assignment and subletting set forth in the Master Lease shall remain applicable to City and shall be binding upon Sublessee as if Sublessee were named therein as "tenant." Sublessee shall not, without the prior written approval of the Director of the Park and Recreation Department, sublease or assign any rights or obligations in this Sublease, which approval may be exercised in her/his sole and absolute discretion. Notwithstanding the foregoing, Sublessee shall have the right, subject to the requirements of (i) the Master Lease and the Reciprocal Easement Agreement and (ii) the Operating Agreement rights of City thereunder, (1) subject to the Operating Agreement (including, without limitation, the Goals) to sublease, or enter into use or occupancy agreements with respect to the Premises for other live performance activities for limited periods in which the community groups entitled to use the Premises pursuant to the Operating Agreement are not using the Premises, and Sublessee shall be entitled to retain any and all rent or income derived from such subleases or use or occupancy agreements of the Premises, and (2) to enter into joint ventures with other persons or entities with respect to specific productions to be staged at the Premises.

(f) **Successors.** Notwithstanding any other provisions hereof, all of the terms, covenants and conditions of this Sublease shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

(g) **Third Parties.** Nothing contained in this Sublease is intended to confer any benefit or right of any kind on any person who is not a party signatory to this Sublease.

(h) **Notices.** Except as provided in Section 15(g) above, notices, requests, and other communications hereunder shall be effective when received, but if sent by registered or certified mail, postage prepaid, shall be effective three (3) business days after being deposited in the United States mails, or in the case of facsimile transmissions, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages, the correct destination fax machine number and the result of the transmission as "OK." The address and fax number of the respective parties is set forth below. The parties may change their addresses and fax numbers by giving written notice thereof.

Sublessee: The Colony Theatre Company
 555 North Third Street
 Burbank, CA 91502
 Fax Number (818) 558-7110

City: The City of Burbank
Attn: Department of Park, Recreation and Community Services
275 East Olive Avenue
P. O. Box 6459
Burbank, CA 91510-6459
Fax Number (818) 238-5321

Landlord to: Burbank Mall Associates, LLC
[Address to be inserted in execution copy]
with copy to:

Burbank Town Center Mall Office
201 E. Magnolia Blvd., Suite 151
Burbank, CA 92501
Attention: General Manager
Fax Number (818) 566-7936

(j) **Possessory Interest Tax.** By executing this Sublease and accepting the benefits thereof, a property interest may be created known as a "possessory interest" and such property interest may be subject to property taxation. Sublessee, as the party in whom the possessory interest is vested, may be subject to the payment of property taxes levied upon such interest.

(j) **Authority.** Each individual executing this Sublease on behalf of an entity represents and warrants that he has full authority to execute this Sublease on behalf of such entity and the execution of this Sublease, and entry into this transaction of the undersigned has been duly authorized by such entity.

(k) **Governing Law.** This Sublease shall be governed by and construed in accordance with the laws of the State of California.

(l) **Laws and Ordinances.** Sublessee shall obtain any and all permits and licenses that may be required in connection with its operations at the Premises and shall comply with all applicable federal, state, county and city laws and regulations in the exercise of the rights and privileges granted to it by this Sublease.

(m) **Right of Entry.** City shall have the right to enter upon the Premises, at any and all reasonable times, upon (2) days advance notices, for the purpose of inspection and observation of Sublessee's performance hereunder. Notwithstanding anything to the contrary contained in this agreement, in the event of an emergency Landlord agrees to exercise reasonable efforts to give advance notice to Sublessee of Landlord's need to enter the Premises, provided further however, that Landlord shall have the right to enter the Premises in the event of an emergency even if Landlord is unable to provide Sublessee with such prior notice of Landlord's entry.

(n) **Enforced Delay; Extension of Time of Performance (Force Majeure)**
Performance by any party hereto shall not be deemed to be in default where delays or defaults are

due to war; insurrection; riots, floods; earthquakes; fires; acts occasioned exclusively by violence of nature without the interference of any human agency; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; or the imposition of any applicable governmental moratorium; or any other causes beyond the reasonable control of such party. Any extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause if written notice by a party is sent to the other parties hereto within thirty (30) days of the commencement of the cause and upon acceptance and approval by the other parties hereto (which approval shall not be unreasonably withheld or delayed); in all other events, such extension shall run from the date thirty (30) days (but in no event earlier than the date of the cause of the extension) from the date of written notice by such party and upon acceptance and approval by the other parties hereto (which approval shall not be unreasonably withheld or delayed).

(o) Savings Should any provision of this Sublease be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Sublease.

(p) Waiver A waiver by any party of any of the terms and conditions of this Sublease in any instance shall not be deemed or construed to be a waiver of such terms or condition for the breach of this Agreement (including an Event of Default) by the other party, provided that no such waiver shall be binding or effective unless in writing and no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving party, at any time, and upon notice given in writing to the breaching party, may direct future compliance with the waived term or terms of this Agreement, in which event the breaching Party shall comply as directed from such time forward.

(q) Consent or Approval Rights. Whenever a party's consent or approval is required in this Sublease, such consent or approval shall be deemed given should the party fail to respond within thirty (30) days after being provided with a written notice or a written request for consent or approval pursuant to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Sublease as of the date set forth above.

"Sublessee"

"City"

THE COLONY THEATRE COMPANY

CITY OF BURBANK

By: _____
Barbara Beckley

By: _____
Name: _____
Title: _____

"Landlord"

ATTEST
Office of the City Clerk

By: Burbank Mall Associates, LLC

By: _____
Name: _____
Title: _____

Margarita Campos, City Clerk

Exhibits:
A — The Operating Agreement

APPROVED AS TO FORM
AND LEGAL CONTENT
DENNIS A. BARLOW, CITY ATTORNEY
By: *[Signature]*
Title: _____
Date: 11/13/06

EXHIBIT A

THEATER OPERATING AGREEMENT

This Theater Operating Agreement (this "Operating Agreement ") is entered into by and between the Colony Theater Company, a California non-profit, public benefit corporation (the "Colony") and the City of Burbank (the "City"), with reference to the following facts:

RECITALS:

- A. The City is a long-term tenant of that certain building, associated area and improvements (the "Premises"), pursuant to the terms and provisions of a lease (as the same has been amended by the Sublease (as defined hereinafter), the "Master Lease), dated April 7, 1992 between Burbank Mall Associates, LLC, successor in interest to C.T. Operating Partnership, L.P., a California limited partnership, formerly known as the Alexander Haagen Properties Operating Partnership L.P., successor in interest to The Haagen-Burbank Partnership, a California general partnership ("Landlord"), and the City, as tenant, pursuant to which the Premises were constructed by Landlord for the use of the City.
- B. Section 7.01 of the Master Lease permits the City to use the Premises "for the operation of a cultural facility of the City of Burbank which provides educational, cultural, social and recreational activities to the general public."
- C. In March of 2000 the City Council approved the Sublease Agreement and Master Lease Modification ("Sublease") that provided for occupancy of the cultural facility by the Colony Theater, non-profit, tax-exempt theater company.
- D. The term of the Sublease was for five years and was to expire in August 2005. The City Council approved three extensions to the Sublease, which now expires on November 30, 2006.
- E. The City and the Colony desire to enter into a new Sublease and Operating Agreement (Exhibit A to the Sublease) for a new five year term for the Colony to continue to manage, occupy and use the Premises as a live-performance theater for the general public, while providing reasonable access to community groups located in the City of Burbank.
- F. Concurrently with the execution of this Operating Agreement, the Colony, Landlord and City have executed a new Sublease for the Colony's occupancy of the Premises.

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, each of the parties hereto intending to be legally bound hereby agree as follows:

AGREEMENT

1. Colony Purpose & Programming. The City hereby engages the Colony, and the Colony hereby agrees, to manage and operate the Premises, as a professional playhouse for the purpose of (a) providing legitimate theatrical productions by the Colony for public enjoyment; and (b) under the auspices of the Burbank Department of Park, Recreation and Community Services, providing support for educational, charitable and cultural community activities as required pursuant to the terms hereof. The Colony's programming may include, but will not necessarily be limited to, live theatre productions, cabaret, readings, workshops, seminars, children's theater, benefits, classes and lectures, and will entail extensive use of the auditorium and multi-purpose room.

2. Term. The term (the "Term") of this Operating Agreement shall be concurrent with the term of the Sublease. Any extension of the Term is conditioned upon extension of the term of the Sublease, which is conditioned upon the Colony's substantial compliance with the Goals and Objectives established in Exhibit 1 to this Operating Agreement and as provided in the Sublease. With the approval of the City Council, the parties hereto may agree to amend, modify, or eliminate any of the terms or conditions of this Operating Agreement.

3. Annual Review. The Colony agrees to operate the premises in furtherance of the Goals and Objectives. City and the Colony agree that the Goals and Objectives shall be subject to annual review to occur no later than one year following the Opening Date, and continuing on or about that anniversary throughout the term of the Sublease. As part of this review, The Colony shall submit a financial statement for the most recent completed fiscal year in a form that is approved by the Financial Services Department. Such annual review shall take place at a meeting between one or more representatives of the Colony, the Director of Park, Recreation and Community Services and such other persons as the parties consider necessary. The Director will provide written notice of noncompliance with any goal or objective, with a reasonable period in which to cure such noncompliance. Instances of cured noncompliance shall not affect The Colony's right to seek an extension of term. As a result of this review and with the approval of the members of the Department of Park, Recreation and Community Services Board and the City Council, the parties may agree to amend, modify, or eliminate any of the goals or objectives in light of changing conditions and in furtherance of the best interests of the community.

4. Use by Community Groups. Annual availability of selected portions of the Premises for use by community groups will be as follows:

- (a) Not less than sixty-three (63) days will be made available in the main auditorium.

- (b) Not less than twenty Saturday mornings in the main auditorium.
- (c) Use of the multi-purpose room by community groups with due consideration for the Colony's needs as delineated herein.

The exact dates, particular community groups and specific events shall be determined by the Colony and the Director of the Park, Recreation and Community Services Department, or the designee of such official. Best efforts will be used to achieve maximum scheduling separation for duplicative productions. All of the foregoing time periods are inclusive and take into account the time necessary for the groups to load in and strike their respective productions. Dates allocated to the aforesaid community groups, but not used by them, shall revert to the Colony's use.

5. Colony Support Services. The Colony will provide the following support services for community groups when such are utilizing the facility pursuant to Paragraph 6 (Use by Community Groups) (collectively, "Support Services"):

- (a) A box office at the Premises during business hours for reservation/advance ticketing services for community group performances to take place at the Premises.
- (b) Notification on the outdoor marquee at the Premises of current and upcoming events (subject to the Colony's rights of use relative to such marquee, as set forth in the Sublease).
- (c) Use at the Premises of the Colony's lighting, sound, projection, public address, intercom, headset, and audio/video monitoring systems under the supervision of the Colony's Technical Director.
- (d) Use of the theater backstage areas at the Premises for sets, props, and costumes during community performance periods in the main auditorium.
- (e) Consulting services by the Colony's Technical Director to community groups using the facilities at the Premises.
- (f) If requested, help and consultation by the Colony's professional staff of directors, subject to availability.
- (g) Maintenance, janitorial and lockup services at the Premises.

6. Use Agreement. Any community groups utilizing the Premises pursuant to this Operating Agreement shall be required to execute a use agreement ("Use Agreement") with the Colony, the general form for which shall be approved by the Burbank City Attorney's Office and Landlord, which shall establish box office and facility hours, and will enumerate specific services to be provided by the Colony. It shall retain for the Colony the right to approve personnel operating the Colony's equipment and shall require such groups (a) to exercise safe and reasonable care in their use of the Premises and its fixtures and equipment, (b) to agree to be fully responsible for damage to the Premises and its fixtures caused by

such groups or their audiences, ordinary wear and tear excluded; and (c) to furnish proof of insurance (naming the City, the Colony, Landlord and Landlord's Lender as additional insureds) covering any damage to the Premises and fixtures occurring as a result of the group's use of same as well as the insurance required by Paragraph 23 hereof.

7. Concession Operations. When the Premises are being used by community groups, the Colony may offer to keep its concession operations open for their use, it being understood that all income from such operations shall be and remain the Colony's income. A community group is not obligated to accept the offer, should it occur, and may operate its own concession (provided that no such concession may sell alcohol), so long as such group obtains the proper insurance covering liability for such concession. Any concession operation shall be ancillary to the Colony's primary purpose as described in Paragraph 1.

8. Waiver of Rent and Service Charges. Other than as specifically noted herein, community organizations utilizing the Premises pursuant to Paragraph 4 (Use by Community Groups) and which are provided Support Services pursuant hereto, shall not be charged either for the use of the Premises or for such basic Support Services. The Colony's waiver of the rent and service charges that would otherwise have been due from these organizations for not only the use of the Premises and that of the Colony's furniture, fixtures and equipment, but also the absorption by the Colony of the related expenses resulting from use of the Premises and Colony's furniture, fixtures and equipment by these organizations has been taken into account in determining the rent due under the Colony Sublease.

9. Refusal To Permit Use of Facility. The Colony, with the approval of the Director of Park, Recreation and Community Services, may refuse to permit the use or continued use of the Premises by any group that, in the Colony's reasonable discretion, has not observed its Use Agreements with the Colony or similar agreements with other theaters, or whose performances are functionally incompatible with the orderly use of the Premises or may cause damage to the Premises and its fixtures and improvements.

10. Exclusive Use. Community groups using the Premises shall not be permitted to use the administrative and storage areas, which areas shall be for the Colony's exclusive use.

11. Artistic Control. The Colony shall have the right to determine the content and quality of its own programming and that of the outside groups to which it may rent the Premises pursuant to the Sublease. Each community group shall have the right to determine the content and quality of its own programs.

12. Identity. The Premises will be identified as the "Burbank Center Stage." The Colony may describe itself as the "Resident Theater Company of the Burbank Center Stage" and may describe the Burbank Center Stage as "The Home of the Colony Theatre Company."

13. Marquee. Subject to the provisions of the Master Lease and with the consent of the Landlord and compliance with provisions of the Reciprocal Easement Agreement (as defined in the Sublease) and the Burbank Municipal Code, the Colony will have control of the look and content of the outdoor marquee display.

14. Tax Exempt Status. Notwithstanding any other provision of this Operating Agreement, neither the City nor any community group shall do or fail to do any act which will impair or jeopardize the Colony's tax-exempt or non-profit status under California and federal law.

15. Additional Groups. The Sublease permits the Colony to offer the Premises to groups other than the community groups discussed in Paragraph 4 hereof (Use by Community Groups), the financial arrangements of which may include, without limitation, that of joint venturing with other persons or entities with respect to specific productions to be staged at the Premises.

16. Customization / Alterations. The Colony may display its production photos, awards, and other decorative items that illustrate its history, in the lobby of the Premises. The Colony may also have rotating art, craft, and photography exhibits in suitable public places in the Premises and, when appropriate, will sell these items on a commission basis. Additionally, the Colony shall have the exclusive right to solicit donations for commemorative or identifying markers to be affixed to various walls, floors and fixtures of the facility. Such commemorative or identifying markers may be affixed to seats, doors, rooms, the stage, etc., in recognition of these donations provided, however, that this shall in no event actually confer any possessory rights, removal rights or other rights with respect to such items or the Premises. Further, the Colony may modify the existing stage by adding to or removing any parts thereof, provided only that the stage is restored by the Colony for use by the next community group utilizing same. Additionally, the Colony may, subject to the terms and conditions of the Sublease at its sole discretion, supplement the existing stage lighting system by the addition of gridwork, pipes, etc. to support stage lighting instruments in accordance with applicable Building Codes and the Master Lease.

17. Colony Representations. The Colony represents that:

(a) It is a California non-profit public benefit corporation, duly formed and operating under the provisions of California law, with federal tax exemption under Internal Revenue Code Section 501(c)(3) and California franchise tax exemption under Revenue and Taxation Code Section 23701d, and that it shall maintain such status during the term of this Operating Agreement.

(b) The persons executing this Operating Agreement on behalf of the Colony are authorized to do so.

(c) To the best of its knowledge, it is not in violation of any order or decree of any court of competent jurisdiction or any governmental agency having jurisdiction, and there are no pending or threatened judicial or administrative proceedings which, if determined adversely to the interests of the Colony, could materially affect the Colony's ability to perform its obligations under this Operating Agreement or the Colony Sublease.

18. Liaison. Colony shall appoint an onsite full time person from among its staff regularly working at the Premises to act as a liaison with the City for purposes of this Operating Agreement and the Sublease.

19. Undertaking. Colony shall devote sufficient time as is reasonably necessary to perform its duties hereunder and shall perform such duties in a professional and courteous manner.

20. Insurance. The Colony will carry public liability insurance in accordance with the Sublease. The community groups (or the City) shall be required to carry liability insurance for all community groups' activities and audiences, such insurance to afford protection to a limit of at least \$2,000,000 for injury to or death of any number of persons arising of any one occurrence, and at least \$2,000,000 for any occurrence of property damage with an annual aggregate of at least \$2,000,000, naming the Colony, the City, and Landlord as additional insureds on the policy and submitting proof of insurance and the naming of the Colony, the City, Landlord and Landlord's Lender as additional insureds on separate endorsements delivered to each such party.

21. Right of Inspection.

(a) City, through the Director of the Park, Recreation and Community Services Department, or his/her designee, shall have the right to enter upon the Premises at any and all reasonable times upon two (2) days advance notice for the purpose of inspection and observation of Colony's performance hereunder. During these inspections, City shall have the right to utilize photographic devices and other instruments for recording conditions at the Premises. Said inspections may be made by persons identified to Colony as City's employees or independent contractors engaged by City. Under no circumstance, however, shall City be entitled to record any of the Colony's theatrical performances or rehearsals.

(b) Notwithstanding anything to the contrary contained in this agreement, in the event of an emergency City agrees to exercise reasonable efforts to give advance notice to Colony of City's need to enter the Premises, provided further however, that City shall have the right to enter the Premises in the event of an emergency even if City is unable to provide Colony with such prior notice of City's entry.

22. Enforced Delay; Extension of Time of Performance (Force Majeure). Performance by the Colony shall not be deemed to be in default where delays or defaults are due to war; insurrection; riots, floods; earthquakes; fires; acts occasioned exclusively by violence of nature without the interference of any human agency; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; or the imposition of any applicable governmental moratorium; or any other causes beyond the reasonable control of the Colony. Any extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause if written notice by the Colony is sent to the City within thirty (30) days of the commencement of the cause and upon acceptance and approval by the City (which approval shall not be unreasonably withheld or delayed); in all other events, such

extension shall run from the date thirty (30) days (but in no event earlier than the date of the cause of the extension) from the date of written notice by the Colony and upon acceptance and approval by the City (which approval shall not be unreasonably withheld or delayed).

23. Termination. This Operating Agreement and the Colony Sublease may be terminated by the City upon the occurrence of any of the following events:

(a) Any breach of this Operating Agreement by the Colony which remains uncured for a period of thirty (30) days after written notice from the City; or

(b) Appointment by court order of a receiver, liquidator or trustee for the Colony or the filing of a petition to liquidate or reorganize the Colony by a third party under any bankruptcy, reorganization or insolvency law, which order or petition is not vacated or dismissed within 90 days, or the filing by the Colony by a petition in bankruptcy, reorganization or insolvency laws, or an assignment by the Colony for the benefit of creditors, or the adjudication of the Colony as a bankrupt, or as an insolvent company.

24. General Terms:

(a) **Entire Agreement.** This Operating Agreement and the Sublease and the Master Lease contains the entire agreement of the parties hereto and supersedes any prior written or oral agreement between them respecting the subject matter contained herein; there are no other representations, agreements, arrangements, or other understandings, oral or written, between the parties hereto respecting the subject matter contained herein which are not fully expressed in such agreements set forth hereinabove.

(b) **Titles and Headings; Context.** Titles and headings to paragraphs in this Operating Agreement are for the purpose of reference only and shall in no way limit, define, or otherwise affect the provisions of it. When the context so indicates in this Operating Agreement, the singular includes the plural; the plural includes the singular and the masculine includes the feminine and neuter.

(c) **Incorporation by Reference.** Every exhibit, schedule, and other appendix attached to this Operating Agreement and referred to herein is hereby incorporated in this Operating Agreement by reference.

(d) **Counterparts.** This Operating Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute the same instrument.

(e) **Non-Assignment.** This Operating Agreement, and any rights or obligations hereunder are personal to the Colony and shall not be assignable by the Colony without the City's prior written consent.

(f) Successors. Notwithstanding any other provisions hereof, all of the terms, covenants and conditions of this Operating Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

(g) Third Parties. Nothing contained in this Operating Agreement is intended to confer any benefit or right of any kind on any person who is not a party signatory to this Operating Agreement.

(h) Notices. Notices, requests, and other communications hereunder shall be effective when received, but if sent by registered or certified mail, postage prepaid, shall be effective exactly three (3) business days after being deposited in the United States mails, or in the case of facsimile transmissions, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages, the correct destination fax machine number and the result of the transmission as "OK." The address and fax number of the respective parties is set forth below. The parties may change their addresses and fax numbers by giving written notice thereof.

The Colony Theatre Company
555 North Third Street
Burbank, CA 91502
Fax Number (818) 558-7110

With copies to:

The City of Burbank
Attn: Department of Park and Recreation
275 East Olive Avenue
P. O. Box 6459
Burbank, CA 91510-6459
Fax Number (818) 238-5321

(i) Authority. Each individual executing this Operating Agreement on behalf of an entity represents and warrants that he has full authority to execute this Operating Agreement on behalf of such entity and the execution of this Operating Agreement, and entry into this transaction of the undersigned has been duly authorized by such entity.

(j) Governing Law. This Operating Agreement shall be governed by and construed in accordance with the laws of the State of California.

(k) No Joint Venture. Nothing contained herein, in the Sublease or in any document executed in connection herewith shall be construed as making the Colony, on the one hand, and the City, on the other hand, as joint venturers or partners or agents of each other.

(l) **Reciprocal Easement Agreement; Master Lease; Sublease.** This Operating Agreement is subject to the terms and conditions of the REA, the Sublease and the Master Lease, and unless specifically amended by the Sublease, to the extent of any conflict between the terms and conditions hereof and the terms and conditions of the Master Lease, the terms and conditions of the Master Lease shall control, and to the extent of any conflict between the REA and either the Master Lease, the sublease, or this Operating Agreement, the REA shall control.

(m) **Laws and Ordinances.** The Colony and its subcontractor shall obtain any and all permits and licenses that are required in connection with its operations at the Premises and shall comply with all applicable federal, state, county and city laws and regulations in the exercise of the rights and privileges granted to it under the Sublease.

IN WITNESS WHEREOF, the parties have executed this Operating Agreement as of the Effective Date.

THE COLONY THEATRE COMPANY

By: _____
Barbara Beckley, Its President

THE CITY OF BURBANK

By: _____
Name: _____
Title: _____

Exhibits:

1--Goals and Objectives

APPROVED AS TO FORM
AND LEGAL CONTENT
DENNIS K. BARLOW, Esq. ATTORNEY
By: _____
Title: _____
Date: 11/19/06

EXHIBIT 1

GOALS & OBJECTIVES FOR THE COLONY THEATRE COMPANY AT THE BURBANK CENTER STAGE

YEAR 1 / 2005-2006

CORE OBJECTIVES

Institutional

1. To consistently provide high-quality productions for a reasonable price.
2. To select plays that appeal to the common humanity we all share rather than to specific constituencies.
3. To create a warm and welcoming environment for audiences, artists, staff, and all others who enter the premises.
4. To foster a community of talented professional artists who are dedicated to serving the art rather than their own egos.
5. To provide heroic customer service.

The Facility

1. Maintain all theatrical equipment in good working order for The Colony's own use, as well as use by other groups that use the space.
2. Maintain all fixed assets within the facility in a safe and operational condition.

The Community

1. Offer discounts of 5 – 15% off general admission single ticket prices and 3 – 10% off standard, non-discounted subscription prices to Burbank residents through the Department of Parks & Recreation Newsletter.
2. Offer group discount arrangements of 5 – 15% off standard, non-discounted subscription prices, 5 – 25% off general admission single ticket prices, and, for preview performances, 25 – 50% off general admission single ticket prices for Burbank community organizations and groups.
3. Provide discounts for Preview performances of 25 – 50% off general admission single ticket prices to charities for fundraising events.
4. Attract theatre patrons through marketing opportunities to the Media Center as potential shoppers and diners.
5. Continue to engage the community through outreach efforts and involvement in community based organizations, activities, and events.

Senior Citizens

1. Offer discounts for preview performances of 25 – 50% off general admission single ticket prices to senior citizen groups.

2. Offer discounts of 5 – 15% off general admission single ticket prices to senior citizens.
3. Offer discounts of 3 – 10% off standard, non-discounted subscription prices to senior citizens.
4. Continue to foster relationships with senior organizations through activities such as providing complimentary tickets in exchange for volunteer work.

Youth

1. Offer discounts for preview performances of 25 – 50% off general admission single ticket prices to youth groups.
2. Offer discounts of 5 – 15% off general admission single ticket prices to full-time students.
3. Offer discounts of 3 – 10% off standard, non-discounted subscription prices to full-time students.
4. Offer ½ price subscriptions to youth under 18.
5. Continue to engage the youth of the community by providing employment opportunities and theatre arts education through Burbank based schools and special programs.

ANNUAL GOALS

1. Attract an estimated 25,000 theatre patrons to the Media Center (measured by ticket sales) as potential shoppers and diners.
2. Complete the 2006 subscription season and commence the 2007 subscription season for a total of approximately 125 non-rental performances.
3. Present a season of five productions encompassing comedies, dramas, and musicals.
4. Complete annual audit with the City of Burbank.

EXHIBIT 1

GOALS & OBJECTIVES FOR THE COLONY THEATRE COMPANY AT THE BURBANK CENTER STAGE

YEAR 2 / 2006-2007

CORE OBJECTIVES

Core objectives as defined in year 1, shall be continued throughout this year.

ANNUAL GOALS

1. Attract an estimated 26,000 theatre patrons to the Media Center (measured by ticket sales) as potential shoppers and diners.
2. Complete the 2007 subscription season and commence the 2008 subscription season for a total of approximately 125 non-rental performances.
3. Present a season of five productions encompassing comedies, dramas, and musicals.
4. Complete annual audit with the City of Burbank.
5. Per the business plan, begin evaluation and consultation to brand The Colony Theatre.
6. Create plan to actively sell program space to local businesses.
7. Research and submit capacity-building grants to fulfill vacant staff positions in marketing and development.

EXHIBIT 1

GOALS & OBJECTIVES FOR THE COLONY THEATRE COMPANY AT THE BURBANK CENTER STAGE

YEAR 3 / 2007-2008

CORE OBJECTIVES

Core objectives as defined in year 1, shall be continued throughout this year.

ANNUAL GOALS

1. Attract an estimated 26,000 theatre patrons to the Media Center (measured by ticket sales) as potential shoppers and diners.
2. Complete the 2008 subscription season and commence the 2009 subscription season for a total of approximately 125 non-rental performances.
3. Present a season of five productions encompassing comedies, dramas, and musicals.
4. Complete annual audit with the City of Burbank.
5. Per the business plan, create dinner packages with nearby restaurants and hotels.
6. Continue to explore revenue sources through facility rentals with focus on catering to weekday events such as meetings, training sessions, motivational seminars, and conferences for large corporations.

EXHIBIT 1

GOALS & OBJECTIVES FOR THE COLONY THEATRE COMPANY AT THE BURBANK CENTER STAGE

YEAR 4 / 2008-2009

CORE GOALS

Core objectives as defined in year 1, shall be continued throughout this year.

ANNUAL GOALS

1. Attract an estimated 27,000 theatre patrons to the Media Center (measured by ticket sales) as potential shoppers and diners.
2. Complete the 2009 subscription season and commence the 2010 subscription season for a total of approximately 125 non-rental performances.
3. Present a season of five productions encompassing comedies, dramas, and musicals.
4. Complete annual audit with the City of Burbank.
5. Per the business plan, continue to build board with focus on recruiting members with corporate and philanthropic influence, and major gift capacity.

EXHIBIT 1

GOALS & OBJECTIVES FOR THE COLONY THEATRE COMPANY AT THE BURBANK CENTER STAGE

YEAR 5 / 2009-2010

CORE GOALS

Core objectives as defined in year 1, shall be continued throughout this year.

ANNUAL GOALS

1. Attract an estimated 27,000 theatre patrons to the Media Center (measured by ticket sales) as potential shoppers and diners.
2. Complete the 2010 subscription season and commence the 2011 subscription season for a total of approximately 125 non-rental performances.
3. Present a season of five productions encompassing comedies, dramas, and musicals.
4. Complete annual audit with the City of Burbank.
5. Per the business plan, retire debt and allocate any surplus to reserve accounts.
6. Begin strategic plan process for the next five year period.

THE

Colony

THEATRE COMPANY

World Class Theatre in the Heart of Burbank

BUSINESS PLAN 2006-2011

INTRODUCTION

In the fall of 2005, The Colony Theatre Company initiated an organizational analysis, with the goal of ensuring long-term viability in the face of financial challenges caused by significant changes in the environment.

This discovery process identified three key areas that required immediate attention: cash flow, debt reduction, and board recruitment. To satisfy the urgency of the cash flow challenge, cuts were made to expenses, the balance of the production season was altered, and unsecured loans from top donors were acquired. These efforts quickly stanchd further letting and, as a result, the operating deficit for the most recently completed fiscal year, which ended May 31, 2006, was reduced by 80% compared to the three previous fiscal years. Steps were then taken to get the organization back on track and debt-free.

Through the spring of 2006, staff and board members continued the process of streamlining internal practices, identifying and implementing additional cost cutting measures, and exploring board recruitment opportunities at the local community level. This was followed in the summer of 2006 with temporary restructuring of some lower level staff responsibilities to ensure that executive staff members were afforded the time to devote to financial analysis and fundraising. At this point, senior staff began meeting with subscribers, donors, peers, and consultants to gain advice toward accelerating the recovery and to increase the constituency base.

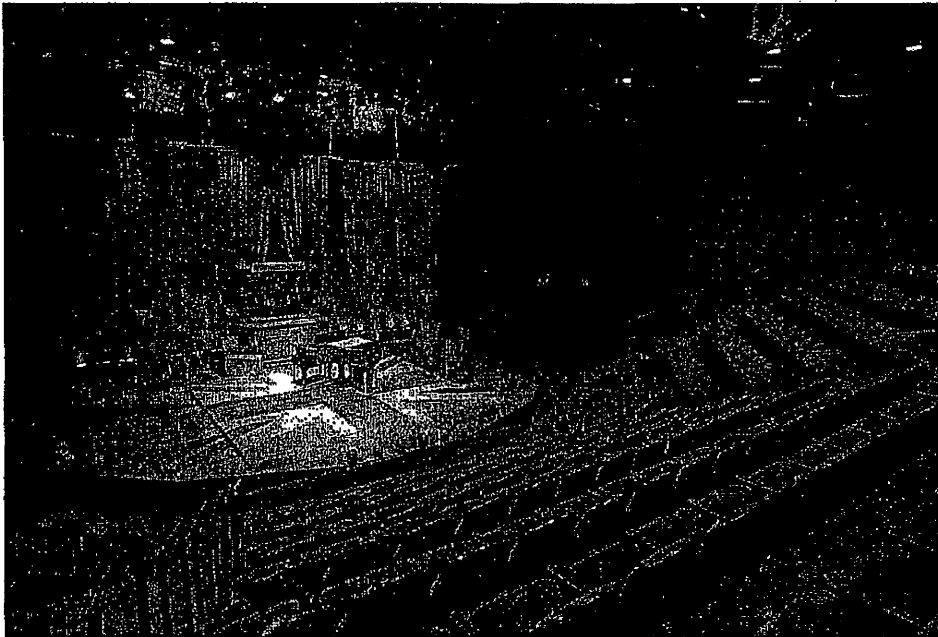
As of September, 2006, the organization has experienced a financial turnaround evidenced by achieving operating net income for the first quarter of the current fiscal year (see Appendix A), and the future is bright based on the implementation of this business plan.

MISSION STATEMENT

The mission of the Colony Theatre Company is to stimulate, inspire, illuminate, and celebrate our common humanity through the shared experience of live theatre. The organization is committed to producing a wide range of compelling, well-crafted plays and musicals that entertain and enrich the audience's imagination, take them on a rewarding emotional journey, and nourish a lifelong passion for great theatre.

CORE VALUES

- To consistently provide high-quality productions for a reasonable price.
- To select plays that appeal to the common humanity we all share rather than to specific constituencies.
- To create a warm and welcoming environment for audiences, artists, staff, and all others who enter the premises.
- To foster a community of talented professional artists who are dedicated to serving the art rather than their own egos.
- To provide heroic customer service.



ORGANIZATIONAL PROFILE

Origins

The Colony Theatre Company was founded in 1975 by a group of young television actors eager to return to their theatre roots. Over the years, we evolved from a small, local ensemble into an established, award-winning, and nationally recognized non-profit performing arts institution, appearing for the past four years on Encyclopedia Britannica Almanac's list of "25 Notable U.S. Theatre Companies." In 2000, we moved from our 99-seat theatre in the Silver Lake district of Los Angeles into a beautiful 276-seat performance space created by the City of Burbank, where we continue to thrive as a fully professional union-contract theatre.

Summary of Major Programs/Services

The Colony produces a season of plays and musicals that explore all genres, focusing on World, West Coast, and Los Angeles premieres. The season typically consists of five productions along with regularly scheduled after-show "talk-backs" with actors and directors. Additionally, The Colony frequently offers extensive low-cost tickets to students, seniors, and community groups. We also provide complimentary tickets and subscriptions to various charitable and community events across the Los Angeles region, and frequently open the facility for use by Burbank community groups.

Number of People Served

During the 2005-2006 season, the theatre employed more than 90 theatre professionals and nearly a hundred volunteers. Our productions reached an audience of over 25,000 patrons.

Geographic Area Served

The Colony Theatre directly serves all of Los Angeles County as well as some outlying regions and states. The majority of our patrons reside in Burbank, Glendale, Pasadena, and across the San Fernando Valley area. Recent survey information illustrates that 70% of our audience comes from outside the City of Burbank and 56% of our patrons contribute to the local economy by dining and/or shopping when they attend our performances.

Budget Size

The budget is approximately \$1 million, with approximately 70% of revenue coming from earned sources and 30% from contributions. This earned/contributed ratio is atypical of similar organizations of our size:

	Rubicon Theatre	International City Theatre	East West Players	The Colony Theatre Co.
Seating Capacity	212	349	240	276
# Performances of each show	25	22	24	25
# Subscribers	2,600	1,500	795	3,309
Earned/Contributed Income Ratio	50/50	45/55	25/75	70/30

Administration

The 6-member Board of Directors is smaller than comparable organizations, and steps are being taken to grow the board with members who are capable of contributing to the theatre in a variety of ways. The staff size, compensation levels and benefit packages are somewhat lower than other organizations with similar budgets. The reporting structure of the Artistic Director as CEO and the Managing Director serving as COO is common in the non-profit arts sector.



The cast of The Grand Tour

THE PLAN

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ARTISTIC PROGRAMS

Goal: Continue to produce at the highest professional level.

Objective: Produce quality artistic programs that support the mission of The Colony Theatre.

Timeline **Strategies**

2006-2007

- Produce smaller cast shows with fewer technical demands that do not sacrifice the quality of work expected of The Colony Theatre. The season includes *Billy Bishop Goes to War*, the West Coast Premiere of *I Have Before me a Remarkable Document Given to Me by a Young Lady from Rwanda*, the Los Angeles Premiere of *The Musical of Musicals! (The Musical!)*, *Stage Struck*, and *The Thousandth Night*.

2007-2011

- Continue to produce shows that can be financed through subscriptions, ticket sales, contributions, sponsorships and grants that meet the artistic mission of The Colony but stay within the restrictions of remaining profitable.



The cast of The Glass Menagerie

BOARD OF TRUSTEES

Goal: Develop governance and support needed to help fulfill the mission of The Colony Theatre.

Objective: Build board membership and participation.

<u>Timeline</u>	<u>Strategies</u>
2006-2007	<ul style="list-style-type: none">• Establish Advisory Committee to brainstorm ideas on board development specific to The Colony Theatre.• Increase Board of Trustees membership by three active members by end of fiscal year.• Create board handbook and implement new member orientation.
2007-2008	<ul style="list-style-type: none">• Hold periodic professional development sessions during bi-monthly Board of Trustees meetings.• Begin annual Board retreats.• Continue to build Board by focusing on expertise in areas not currently represented, to achieve overall composition of:<ul style="list-style-type: none">• Nonprofit management• Theatre/media arts• Education• Marketing/public relations• Fundraising• Event production• Human resources/labor law• Finance• Insurance• Civic/community leader/influencer• Corporate leader/influencer
2008-2009	<ul style="list-style-type: none">• Continue to build Board focusing on areas listed above.• Build stronger personal relationships with Foundations and other major funders.• Build more community relationships within the City of Burbank.• Build deeper volunteer relationships, including senior citizens and students.
2009-2011	<ul style="list-style-type: none">• Continue to build Board with focus on recruiting members with corporate and philanthropic influence, and major gift capacity.

MARKETING & FUNDRAISING

Goals Raise the visibility of The Colony as a premiere producing theatre of superior quality.

Objective: Increase subscriber and donor bases, establish Foundation support, and create Major Gifts campaign for long-term sustainability.

Timeline

Strategies

2006-2007

- Maintain subscriber base of 3,300.
- Explore, implement, and evaluate marketing initiatives that use our audience to reach out to new constituencies. These initiatives may include money-back guarantees, vouchers for first time ticket buyers, ticket benefits for top donors, and various new subscriber incentives.
- Invigorate existing campaigns including The Wall of Honor and Seat Dedications.
- Clarify board participation in fundraising.
- Schedule regular meetings for senior staff and board members with donors, prospects, and community leaders.
- Begin cultivating foundation relationships.
- Continue to examine customer service practices to ensure consistency with the Colony core value of heroic customer service.
- Conduct small salons to invigorate the volunteer base and collect ideas and interest to form an active volunteer program of passionate friends of The Colony Theatre.
- Plan/set next season in a timely fashion to ensure successful renewal campaign.

2007-2008

- Continue to explore and implement new marketing initiatives, and evaluate success ratios.
- Increase subscriber base by 6%.
- Increase single ticket sales by 6%.
- Begin to develop targeted donor campaign using naming opportunities to secure major gifts totaling \$100,000 by 2010.
- Continue cultivating foundation relationships.
- Target affinity markets by acquiring lists by zip code and other filters through the LA Big List.
- Continue to assess earned income through concessions and product sales, and implement new programs.
- Begin evaluation and consultation to brand The Colony Theatre.
- Create dynamic cultivation events for prospects.
- Research and submit capacity-building grants to fulfill vacant staff positions in marketing and development.
- Explore affordable ways to enhance street presence on Third and Cypress.

- Create plan to actively sell program space to local businesses.
- Reassess and re-design web site to ensure customer ease and satisfaction.
- Plan/set next season in a timely fashion to ensure successful renewal campaign.

2008-2009

- Continue to explore and implement new marketing initiatives, and evaluate success ratios.
- Increase subscriber base by 6%.
- Increase single ticket sales by 6%.
- Implement targeted donor campaign using naming opportunities to secure \$30,000 toward goal of \$100,000 in major gifts by 2010.
- Use recovery success and established relationships to approach foundations for support.
- Create dinner packages with nearby restaurants/hotels.
- Research grants that subsidize educational programs.
- Plan/set next season in a timely fashion to ensure successful renewal campaign.

2009-2010

- Continue to explore and implement new marketing initiatives, and evaluate success ratios.
- Increase subscriber base by 6%.
- Increase single ticket sales by 6%.
- Continue targeted donor campaign using naming opportunities to secure \$30,000 toward goal of \$100,000 in major gifts by 2010.
- Plan/set next season in a timely fashion to ensure successful renewal campaign.

2010-2011

- Continue to explore and implement new marketing initiatives, and evaluate success ratios.
- Increase subscriber base by 6%.
- Increase single ticket sales by 6%.
- Secure final \$40,000 to reach fundraising goal of \$100,000 in major gifts.
- Plan/set next season in a timely fashion to ensure successful renewal campaign.



Jeffrey Rockwell & Larry Cedar in Billy Bishop Goes to War.

FINANCE

Goal: Eliminate debt, attain stability, and work toward growth.

Objectives: Reduce expenses, allocate surpluses for debt reduction, and take steps to build reserves.

<u>Timeline</u>	<u>Strategies</u>
2006-2007	<ul style="list-style-type: none">• Monitor expenses and cash flow to gauge success of budget reductions.• Conduct audit for last fiscal year.• Allocate projected end of year surplus of \$35,000 for debt reduction.
2007-2008	<ul style="list-style-type: none">• Per marketing and fundraising plan, budget growth of 6% for earned income, 7% for contributed income, and 6% for expenses. Monitor to ensure \$43,000 surplus at end of year to be allocated for debt reduction.• Conduct audit for last fiscal year.
2008-2009	<ul style="list-style-type: none">• Per marketing and fundraising plan, budget growth of 6% for earned income, 7% for contributed income, and 6% for expenses. Monitor to ensure \$82,000 surplus at end of year to be allocated for debt reduction.• Conduct audit for last fiscal year.
2009-2010	<ul style="list-style-type: none">• Per marketing and fundraising plan, budget growth of 6% for earned income, 7% for contributed income, and 6% for expenses. Monitor to ensure \$93,000 surplus at end of year to be allocated for debt reduction.• Conduct audit for last fiscal year.
2010-2011	<ul style="list-style-type: none">• Per marketing and fundraising plan, budget growth of 6% for earned income, 7% for contributed income, and 6% for expenses. Monitor to ensure \$113,000 surplus at end of year to be allocated for debt reduction.• Conduct audit for last fiscal year.• When debt is retired, allocate any additional surplus to reserves.

STAFF

Goal: Develop the staff and support needed to help fulfill The Colony mission.

Objective: Ensure that each staff position is effectively contributing to the viability of the organization.

<u>Timeline</u>	<u>Strategies</u>
2006-2007	<ul style="list-style-type: none">• Review, revise, and implement employee handbook.• Evaluate and implement new job descriptions and employee classifications.• Establish control over process for introductory and annual evaluations, so that work performance issues are documented and addressed immediately.• Continue professional development of staff through seminars and mentoring to achieve a high level of professionalism and effectiveness.
2007-2008	<ul style="list-style-type: none">• Develop procedures handbook.• Continue to evaluate job descriptions and employee effectiveness and make adjustments where appropriate.• Increase staff wages.• Begin annual staff retreats.
2008-2011	<ul style="list-style-type: none">• Assess benefits package and enhance, as feasible, to include pension, vision, and life insurance.• Continue to evaluate job descriptions and employee effectiveness and make adjustments where appropriate.• Upon receipt of capacity grant, begin search for suitable candidates to fill vacant staff positions in the areas of marketing and development.



Erica Tazel & Louis Lotorto in ...Young Lady from Rwanda

OPERATIONS/FACILITIES

Goal: To maximize uses of the facility which fulfill the mission of The Colony.

Objective: Increase rental income/capacity.

Timeline

Strategies

2006-2007

- Assess and evaluate rental rates to ensure market rate prices for space, equipment, and billable hours.
- As able, acquire additional equipment, such as projectors and screens, that enhance the appeal of renting at The Colony.
- Create rental brochure and increase marketing efforts for rentals.

2007-2011

- Continue to explore revenue sources through facility rentals with a focus on catering to weekday events for large corporations. These events may include meetings, training sessions, motivational seminars, and conferences, as well as other initiatives put forth by local community leaders.



Jay Johnson with Darwin in The Two and Only

BUDGET PROJECTION

This projection utilizes actual results for FY 05-06, and then factors in the planned program growth and operational changes as described in the preceding Business Plan.

06-07	%	07-08	%	08-09	%	09-10	%	10-11	%
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Income

Subscription Income	405,000	48%	429,300	48%	455,058	46%	482,361	46%	511,303	45%
Single Ticket Sales	126,500	15%	134,090	15%	142,135	14%	150,664	14%	159,703	14%
Concessions Income	10,000	1%	11,000	1%	12,100	1%	13,310	1%	14,641	1%
Rental Income	75,000	9%	80,250	9%	85,868	9%	91,878	9%	98,310	9%
Interest Income	250	0%	265	0%	281	0%	298	0%	316	0%
Surcharges	9,500	1%	10,165	1%	10,877	1%	11,638	1%	12,453	1%
Contributed Income	220,500	26%	238,140	26%	257,191	26%	277,766	26%	299,988	26%
Major Gift(s)					30,000	3%	30,000	3%	40,000	4%

Total Income	845,750		903,210		993,510		1,057,915		1,166,715	
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Expense

Personnel	463,992	57%	491,832	57%	521,341	57%	552,622	57%	585,779	57%
Production	116,425	14%	123,411	14%	130,815	14%	138,664	14%	146,984	14%
Marketing	101,250	12%	107,325	12%	113,765	12%	120,590	12%	127,826	12%
Facility	84,300	10%	89,358	10%	94,719	10%	100,403	10%	106,427	10%
Fundraising/Development	7,600	1%	8,056	1%	8,539	1%	9,052	1%	9,595	1%
Other	37,200	5%	39,432	5%	41,798	5%	44,306	5%	46,964	5%

Total Expense	810,767		859,413		910,978		965,138		1,023,575	
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Net Income	35,983		43,797		82,532		92,279		116,139	
Retained Earnings	250,529		214,546		170,749		88,217		4,062	
Net Balance	214,546		170,749		88,217		4,062		117,200	

Note:

- Contributed income in 04/05 increased dramatically due to one-time gifts totaling \$150,000.



ATTACHMENT C

Vavrinek, Trine, Day & Co., LLP
Certified Public Accountants & Consultants

VALUE THE DIFFERENCE

City of Burbank

*Agreement Analysis
of
The Colony Theater*

September 13, 2006

8270 Aspen Street Rancho Cucamonga, CA 91730 Tel: 909.466.4410 Fax: 909.466.4431 www.vtdcpa.com

FRESNO • LAGUNA HILLS • PALO ALTO • PLEASANTON • RANCHO CUCAMONGA • SAN JOSE



Vavrinek, Trine, Day & Co., LLP
Certified Public Accountants & Consultants

VALUE THE DIFFERENCE

September 13, 2006

Attn: Bob Torrez
City of Burbank
275 East Olive Avenue
Burbank, CA 91510-6459

RE: Analysis of the Colony Theater Agreement

Dear Mr. Torrez:

In response to your request, we were engaged to perform an analysis of the Colony Theater Agreement, and to make findings and suggestions regarding this business arrangement to the City management. Procedures performed during the analysis were at the request of the management of the City of Burbank. A report is attached which details our findings, recommendations, and conclusions.

Yours very truly,

Joe Aguilar
OF VAVRINEK, TRINE, DAY & CO., LLP

**City of Burbank
Colony Theater Agreement**

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City of Burbank
Colony Theater Agreement

Executive Summary

An analysis was performed regarding the Colony Theater Sublease Agreement and Theater Operating Agreement between the City of Burbank and Colony Theater Company ("Theater Company"). The Theater Company is a nonprofit 501.C.3 tax-exempt entity that manages and produces live performance theater for the general public. In the following report are events and circumstances, which to the best of our knowledge, are factual as presented to the examiners during the course of our work. This report is intended exclusively for use by the City of Burbank.

Based upon our inquiries and procedures, it appears that the Theater Company substantially complies with the terms of the Sublease Agreement and Theater Operating Agreement with the City of Burbank and all related amendments. It should be noted that several items came to our attention in the course of our engagement that the City may wish to address. These issues are memorialized in the findings that follow:

Findings & Recommendations

Finding #1

The Theater Company program activities works on annual budget of about \$1 million per year. The Theater Company incurred financial difficulties in recent years and has worked to correct its operational deficits. From interviews and discussions, it appears that the Theater Company is operating on an even basis with its current programs. However, the Theater Company is still working on clearing up its past borrowings. Until the Theater Company provides evidence of its long-term viability, the City should consider limiting its lease arrangements with the Company to no more than two years at a time.

Recommendation

The City's should limit its leasing arrangements with the Theater Company to two years at a time until the Theater Company provides evidence of its long-term viability.

City Response

City staff will consider this limitation for the next agreement renewal.

Finding #2

The Theater Operating Agreement includes a provision requiring that the Theater Company submit an annual financial statement for its most recent fiscal year as part of its annual review. The agreement indicates that the financial statement needs to be in the form that is approved by the City's Finance Department. In the most recent annual report, the Theater Company provided a budget recap of the prior year to the current year. A full financial statement that includes a balance sheet and profit and loss statements has not been provided to the City until this year. During the course of this analysis, the

City of Burbank

Colony Theater Agreement

Colony Theater provided a complete set of financials for the most recent complete fiscal year and a recap of profit and loss statements for the past three and half years.

Recommendation

The City's Finance Department needs to establish a format for the submission of an annual financial statement from the Theater Company. The format should include a profit and loss statement, a balance sheet, a budget comparison for major expense and revenue accounts, and a statement of cash flows. The City should request these annual financial statements from the Theater Company for its most recently completed fiscal year.

City Response

Copies of the recently obtained financials have been received by the Parks and Recreation Department with copies forwarded to the City's Finance Department.

Finding #3

The Theater Company provided sufficient documentation to the Parks and Recreation Department for its rent credits. Parks and Recreation keeps comprehensive records of the documentation and other program activities of the Theater Company. All of the improvements and equipment were inspected and accounted for during this engagement.

Recommendation

The Parks and Recreation Department should continue with its efforts in keeping record of the Theater Company programs.

City Response

City staff will continue in its efforts in documenting and inspecting improvements and equipment used for rent credits.

Finding #4

On annual basis, the City does not summarize the list of improvements and equipment acquired by the Theater Company. An annual summary of improvements and equipment will serve as an easy reference for accounting for the items from this point forward. To date, these improvements and items are not too numerous or difficult to account for. However, as the Theater Company matures and grows, additional acquisitions for rent credits can prove difficult to track if a system is not put in place.

Recommendation

The City should recap and summarize the improvements and equipment each year that were used as rent credits and forward this data to the City's Finance Department for fixed asset tracking.

City Response

Parks and Recreation staff will begin to summarize the improvements and equipment by year that are used for the rent credits and forward such information to the City's Finance Department.

City of Burbank
Colony Theater Agreement

Scope of Work

At the request of City management, the scope of our work covered reviewing the management and operations agreement, performing a site visit of the premises, reviewing quarterly rent payments and respective rent credits and reviewing reports and documents provided by Colony Theater Company.

Objectives

The objectives of our analysis were to:

- ❖ Review and inspect Sublease Agreement and Theater Operating Agreement between the City of Burbank and Colony Theater Company
- ❖ Determine that both parties complied with the agreement including insurance and indemnification provisions.
- ❖ Inspect the documentation for quarterly rent payments and respective rent credits for proper authorization and allowed rent credits.
- ❖ Note any inconsistencies or ambiguities found and propose suggestions.

City of Burbank
Colony Theater Agreement

Procedures Performed

- ❖ Inquiries were made of City management, Park and Recreation personnel and the management team of the Colony Theater Company.
- ❖ We performed interviews with the executive director of the Theater Company and other site personnel.
- ❖ We inspected the Sublease Agreement and Theater Operating Agreement originally dated March 2000 and its subsequent amendments between the City and the Colony Theater Company.
- ❖ We obtained an understanding of the policies and procedures used by the Colony Theater Company to submit the quarterly rent less approved rent credits.
- ❖ We obtained an understanding of the policies and procedures used by the City to monitor the Theater Company's compliance with the agreements.
- ❖ We obtained an understanding of the policies and procedures used by the City to approve rent credits.
- ❖ We inspected all of the quarterly rent payments and respective rent credits for proper authorization and allowed rent credits for fiscal years since the inception of the lease arrangement through the quarter ending March 2006.
- ❖ We made an on-site inspection of the improvements and equipment used for rent credits.
- ❖ We attended one of Theater Company's performance to understand its marketing and operational approaches to providing live theater performances to the general public.
- ❖ We prepared a report, noting our findings, recommendations, and conclusions.

City of Burbank
Colony Theater Agreement

Background Information

The City of Burbank entered in an agreement with Colony Theater Company to operate and manage the Colony Theater. Pursuant to the Agreement between Theater Company and the City of Burbank, rental payments less approved rent credits are remitted to the City quarterly.

Through the quarter ending March 2006, the Theater Company has used rent credits in lieu of cash payments for all of its lease payments. Initially, the Theater Company spent its own funds for significant improvements to the Theater including sound panels and dressing room lofts. The value of these items along with some minor equipment have off-set all due lease payments.

Included in the agreement are Theater Company's goals and objectives for its first five years. The Theater Company and the City review these goals and objectives annually. In addition, Theater Company provides an annual report to the City and to the City Council.

The Agreement was initially entered into in March 2000 for a period of 5 years with an option to extend the lease. The City has executed several short term extensions going through December 2006.

Rent credits must be approved in writing by the Director of Parks and Recreation in order for the rent credit to be given. All but one of the approved rent credits include expenditures made by The Theater Company to complete tenant improvements and maintenance and repair items. Maintenance and repair items are the responsibility of the City, but the Theater Company may perform such work when needed. The only item of mobility used for rent credits were the hearing impaired listening devices. These devices are kept in the Theater box office.

ATTACHMENT D

THE COLONY THEATRE COMPANY
COMMUNITY PARTICIPATION 2005-2006

1. Provided the entire building free of charge to Shakespeare at Play to present performances of *Hamlet* on seven occasions, and provided technical assistance.
2. Provided a Master Class in Ventriloquism free of charge with actor and ventriloquist Jay Johnson for Burbank High School students.
3. Provided performances of *The Glass Menagerie*, *Sherlock's Last Case*, ... *Young Lady From Rwanda*, *Billy Bishop Goes to War* followed by talkbacks with actors, playwright, and director for Burbank High School students, Bellerme Jefferson students, and John Burroughs students.
4. Provided Assisted Listening performance for California Council for the Blind for *Sherlock's Last Case*.
5. Provided space and expertise for the Burbank Regional Occupational Program – Burbank area high school students may opt for this credited, structured program of theatrical arts instruction. Students learn about sets, costumes, lighting, and the general operating requirements of a theatre during two weekly sessions for the entire school term.
6. Provided the building for the Kids Community Dental Clinic at cost.
7. Hosted filming for the Department of Park, Recreation & Community Services 80th Anniversary.
8. Conducted a seminar for the Leadership Burbank class.
9. Provided the building free of charge to Leadership Burbank for 2 (two) Graduation events and one Reception.
10. Offered employment and educational opportunities to students of Burbank and Burroughs High Schools working backstage during performances and learning the technical aspects of theatre as well as discipline and focus.
11. Continued to provide free theatre tickets to the Joslyn Senior Center.
12. Provided opportunities for local High school students to earn community service hours.
13. Invited Glendale STAR kids (Glendale Police Department program for disadvantaged children) to attend a performance of *The Grand Tour*.
14. Presented the Colony Community Spotlight Awards in partnership with City of Burbank to honor local citizen Barry Burnett.

15. Provide the building free of charge to local business Coldstone Creamery to hold their semi-annual "auditions."
16. Provide the building free of charge to local business Make-up Designory (AKA MUD) for makeup seminars for their students.
17. Participated in Taste of Burbank.
18. Offered half-price theatre tickets to Burbank Senior Artists' Colony for every production.
19. Offered building at cost for Burbank-based non-profit organizations.
20. Donated tickets and subscriptions to the following organizations for their fundraising efforts:

Women Against Gun Violence
Wheels for Humanity
S.O.S. (Share Our Strength)
L.A. Shanti
Star Education
Sherman Oaks Parent's Association
Share Inc.
Shakespeare by the Sea
Santa Monica Bay Keeper
Santa Monica Alternative School House
Rosemary Children's Services
Rotary Club of Los Angeles
Ribet Academy
Recording for the Blind and Dyslexic
Women's American ORT
Providence/St. Joseph Medical Center Guild
La Providencia Guild of Children's Hospital of Los Angeles
The Pasadena Symphony
Orange Coast Memorial Foundation
Neighborhood Nursery School
San Fernando Valley Council NA'AMAT USA
The Music Circle
The Monarch Golf Classic
Miocean
Robert A. Millikan Middle School
L.A. Fireman's Relief Association
Los Angeles Air Force Officer's Spouse's Club
The Professionals of the League for Crippled Children
LACER After school Programs