

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made this ___ day of _____, 202__, between and among **HOWARD COUNTY, MARYLAND** (the “**County**”), a body corporate and politic, through the County’s Department of Recreation and Parks (the “**Department**”), **COLUMBIA CENTER FOR THEATRICAL ARTS, INC. (“CCTA”)**, a nonprofit corporation formed in accordance with the laws of the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, and designated as a 501(c)(3) entity by the Internal Revenue Service, with a principal place of business located at 6655 Dobbin Road, Columbia, Maryland 21045, **TOBY’S-THE DINNER THEATRE OF COLUMBIA, INC. (“TDT”)**, a corporation formed in accordance with the laws of the State of Maryland, in good standing with the Maryland State Department of Assessments and Taxation, **TOBY’S GENERAL PARTNERSHIP (“Toby’s”)**, a general partnership formed in accordance with the laws of the State of Maryland, and **THE HOWARD COUNTY HOUSING COMMISSION**, a body corporate and politic and the public housing authority for Howard County, Maryland (the “**Commission**”) (collectively, the “**Parties**”).

Recitals

WHEREAS, CCTA is a 501 (c)(3) nonprofit organization founded in 1972, with a mission to educate through the arts by creating theatrical experiences that inspire thought, action, creativity, and change.

WHEREAS, Toby’s is the fee simple owner of approximately 2.580 acres of land located at 5900 Symphony Woods Road in Columbia, Maryland 21044 (the “**Toby’s Site**”).

WHEREAS, Toby’s Dinner Theatre, LLC (“**TDT, LLC**”) is a non-profit, limited liability company to be formed in accordance with the laws of the State of Maryland and in accordance with the terms of this MOU. TDT, LLC shall be registered with the State of Maryland prior to the closing on the sale of the Toby’s Site (as outlined herein). Further, all formation documents shall be provided to the County prior to the closing.

WHEREAS, the Toby’s Site is part of the approved site for the County’s arts center (in the Fiscal Year 2021 Capital Budget as C0364 the New Cultural Center), which includes a mixed-use project with performing and visual arts space (theater, gallery, classroom, black box theaters, office spaces for CCTA and TDT, LLC and studio space) totaling 115,692 sq. ft. (the “**Project**”), a mixed-income apartment project totaling 174 units, and an attached joint use parking garage (the “**Garage**”).

WHEREAS, the residential portion of the Development, as defined below, has been granted funding through the Low-Income Housing Tax Credit (LIHTC) program offered by the State of Maryland to the Commission and so a significant portion of the housing will be offered as affordable housing, under the LIHTC program (the “**Housing Site**” or with the Project and the Garage, the “**Development**”).

WHEREAS, the Development is critical to the County’s Downtown Columbia Plan as the Development will serve as the County’s new hub for the arts and the first of five LIHTC developments, which is a critical component of the Downtown Columbia affordable housing plan as reflected in the Development Rights and Responsibilities Agreement (DRRA) approved by the County Council in 2016.

WHEREAS, the County and the Commission expect to finalize certain allocations of cost for their respective parts of the Development, with the County paying for the Project, the Commission paying for the Housing Site and the costs of the parking garage allocated between the County and the Commission. A breakdown of the current budget is attached hereto as **Exhibit A**. Further, to ensure success of the Development, the Parties agree that they shall enter into such other respective agreements as may be necessary for the operation and maintenance of any common areas, including those in the Garage.

WHEREAS, TDT intends to gift its assets to TDT, LLC, which will report to the Board of Directors of CCTA. CCTA will rent the main theater (including the kitchen), a dance studio, various classrooms and the office spaces from the County. CCTA will also rent one of the black box theaters from the County to serve as the new Children’s Theater in Howard County.

WHEREAS, subject to the provisions of Section III.I. herein, the County’s Department of Recreation and Parks (the “**Department**”) will use the second blackbox theater, a second dance studio, and classrooms to enhance County-sponsored programs in arts for all residents. The Howard County Arts Council will curate the gallery space.

WHEREAS, the County intends to formally name the Project, the “Howard County Center for the Arts.”

WHEREAS, if approved by the County Council of Howard County, TAO1-FY2021, introduced October 5, 2020 (the “**TAO**”), would transfer an appropriation in the amount of \$54,652,000 to Capital Project C0364.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and the foregoing recitals which are deemed to be a material part of this MOU and hereby incorporated herein, the County, CCTA, TDT and the Commission agree as follows:

I. PURPOSE

The purpose of this MOU is to set forth the respective responsibilities and agreements between and among the Parties that shall be in effect for the construction, operation and funding of the Project. The County and CCTA agree that the terms outlined herein regarding the leased non-housing space shall be incorporated in a lease (or leases) for the portion of the Project leased by CCTA from the County.

II. TERM OF MOU

The term of this MOU shall be effective from the date the County Executive for Howard County signs this MOU on behalf of Howard County through the end of any term of any future lease (or leases) between the County and CCTA for the Project. If the TAO is not approved by the Howard County Council by no later than January 5, 2021, this MOU shall terminate as of January 5, 2021.

III. AGREEMENTS

A. **Toby's Site and Conveyance of Assets.** Toby's, as Seller, entered into a Purchase and Sale Agreement dated January 16, 2017 with Orchard Development Corporation, as Buyer ("**PSA**"), by the terms of which the Seller agreed to sell the Toby's Site to Buyer for a purchase price of Seven Million Two Hundred Thousand Dollars (\$7,200,000.00). The Commission and/or the County shall purchase the Toby's Site under terms consistent with the PSA (either through an assignment of the PSA or pursuant to new agreement(s) with consistent terms).

Simultaneously with the closing on the sale of the Toby's Site to the Commission and/or the County, TDT will gift its assets to TDT, LLC. In addition, Toby's, TDT and CCTA (collectively, "**TTC**") and Orchard Development Corporation (Orchard as the Developer) entered into a Master Development Agreement dated January 16, 2017 ("**MDA**") by the terms of which the Commission and the Developer will enter into a Project Development Agreement (as defined in the MDA) that addresses the terms and conditions for the development of the Project and Garage. The terms described in the MDA, except as the parties agree to any amendments, shall be incorporated into any and all agreements regarding the development and operation of the Project and the Garage.

B. **FF&E/Fit-Out Escrow and Security Deposits.** The lease between CCTA and the County shall include provisions regarding CCTA's obligation to provide the furniture, fixtures and equipment (the "**FF&E/Fit-Out**") necessary to fit out the leased space, which more specifically includes the fit out needed for the main theater, black box theater, backstage and offices, kitchen, dining and café area, classrooms and dance studios, and box office and group sales office as illustrated on **Exhibit B**. CCTA has determined that the FF&E/Fit-Out for the space will cost approximately \$3,089,000 and has indicated that it plans to seek private and public donations to defray the cost of its obligation ("**Total FF&E Amount**"). One source of public donations may be grants from the State of Maryland ("**State Grants**"), which the County agrees to support, including letters of support from the County Executive, to assist CCTA in fulfilling its obligations with respect to the FF&E/Fit-Out and the security deposit, as outlined more fully herein. CCTA may request that a transfer of FF&E/Fit-Out from another location to the Project be assessed by the County and in the County's discretion, may reduce the Total FF&E Amount needed (and thus the amount required to be placed into the Escrow Account defined below).

On or before the purchase of the Toby's Site by the Commission and/or the County, CCTA shall fund an escrow account into which funds will be deposited to ensure that sufficient funds are available for CCTA to fulfill its FF&E/Fit-Out obligations (the "**Escrow**"). The

County shall establish and appoint an escrow agent for the escrow account (the “**Escrow Account**”) that is for the benefit of the Project, and the County shall retain control of the funds remaining in the Escrow Account until all FF&E/Fit-Out is provided as agreed, at which time any funds remaining in the Escrow Account may be released to CCTA. Until all FF&E/Fit-Out is complete, all donations, including State Grants, will be deposited into the Escrow Account. The Parties acknowledge the importance of the FF&E/Fit-Out for the success of the Project and agree that all fixtures which are part of the FF&E/Fit-Out, whether funded through the Escrow, donations or CCTA funds, shall remain the property of the County and shall be surrendered to the County with the Project at the expiration of the Final Lease. It is agreed that personal property and certain equipment, which includes, but is not limited to, sound and lighting equipment, is not considered fixtures and shall remain the property of CCTA and/or TDT, LLC, to be removed at the expiration of the Final Lease.

The Escrow funds will be deposited and disbursed as follows:

(i) Simultaneous with the purchase of the Toby’s Site by the Commission and/or the County, CCTA, TDT, LLC or any other related party on behalf of CCTA, will deposit Five Hundred Thousand Dollars (\$500,000) into the Escrow Account (the “Initial Escrow Deposit”). If CCTA is unable to post the Initial Escrow Deposit, any party to this MOU may terminate this MOU prior to closing and there shall be no liability or obligation of any party hereunder.

(ii) Eight (8) months after the closing on the sale of the Toby’s Site, the balance in the Escrow Account shall be not less than One Million Two Hundred Thousand Dollars (\$1,200,000), which funds may be a combination of the Initial Escrow Deposit, public or private donations (including State Grants) or additional funds placed into the Escrow by CCTA and/or TDT, LLC as needed.

(iii) No later than six (6) months before the planned completion date of Phase Two of the Project, as outlined on Exhibit C, the balance in the Escrow Account shall be not less than One Million Nine Hundred Thousand Dollars (\$1,900,000) (the “Phase Two Amount”), which funds may be a combination of the Initial Escrow Deposit, public or private donations (including State Grants) or additional funds placed into the Escrow by CCTA and/or TDT, LLC as needed.

(iv) No later than six (6) months before the planned completion date of Phase Four of the Project, as outlined on Exhibit C, the balance in the Escrow Account shall be not less than the Total FF&E Amount minus the cost of approved FF&E/Fit-Out items already purchased (the “Phase Four Amount”), which funds may be a combination of the Initial Escrow Deposit, public or private donations (including State Grants) or additional funds placed in escrow by CCTA and/or TDT, LLC as needed.

(v) Should CCTA have an official record of a State-authorized budgeted fund award and/or written evidence of a charitable pledge which is legally enforceable by CCTA but not received as of the date of any required payment for the

FF&E/Fit Out, and so long as the funding of any such donation is due to be actually received and deposited in the Escrow Account in sufficient time to fund the FF&E/Fit-Out necessary for the following Phase of development, such funding will be credited by the County to satisfy the funding required in this section. Further, any such funds must be immediately deposited into the Escrow Account upon receipt by CCTA and/or TDT, LLC.

(vi) So long as the balance in the Escrow Account is sufficient to fund the foregoing FF&E/Fit-Out installments, CCTA may utilize funds in the Escrow Account to satisfy its security deposit requirements. The total security deposit shall be Two Hundred and Fifty Thousand Dollars (\$250,000) (the “**Security Deposit**”), which may be paid in installments, as outlined below:

- a. At the time of issuance of the certificate of use and occupancy referenced for Phase Two of the Project, as outlined on Exhibit C, \$25,000 shall be due as the first installment of the Security Deposit;
- b. At the time of issuance of the certificate of use and occupancy referenced for Phase Four of the Project, as outlined on Exhibit C, \$55,000 shall be due as the second installment of the Security Deposit (raising the then current total of the Security Deposit to \$80,000);
- c. Twelve (12) months after the issuance of the certificate of use and occupancy referenced for Phase Five of the Project, as outlined on Exhibit C, \$170,000 shall be due as the final installment of the Security Deposit (raising the final amount of the Security Deposit to \$250,000).

(vii) If funds remain in the Escrow Account after all FF&E/Fit-Out is complete and the required security deposit is fully funded, such funds shall be paid to CCTA and the Escrow Account may be closed.

C. Lease Terms.

(i) There will be an initial lease between the Commission and/or County, as landlord/lessor, that shall commence at the closing (of the sale of the Toby’s Site) lease and occupancy by TDT, LLC and the CCTA, as tenant/ lessee, of the current dinner theater located on the Toby’s Site and that shall terminate when the main theater (referenced above, i.e., the new dinner theater) is completed and a certificate of use and occupancy has been issued for the new dinner theater (“**Lease-Current Dinner Theater**”).

(ii) There will be a second lease between the County, as landlord/lessor, for the lease and occupancy by CCTA, that shall commence upon completion and issuance of a certificate of use and occupancy, of the new dinner theater to be constructed as part of the Project (“**Final Lease**”).

(iii) The Lease-Current Dinner Theater and the Final Lease shall incorporate the terms of this MOU and shall outline all lease requirements, including but not limited to rent, security deposit(s), approval procedures for modifications, signage and installation of FF&E/Fit Out equipment.

(iv) The Lease-Current Dinner Theater and the Final Lease shall be signed by all required parties by April 15, 2021.

(v) The initial lease term of the Final Lease shall be fifteen (15) years, with the option of one (1) renewal of five (5) years, plus the time differential between the date of issuance of a certificate of use and occupancy for the new dinner theater and twelve (12) months after the issuance of a certificate of use and occupancy for the remaining space to be leased to CCTA. Rent (in the amounts set forth on the schedule attached hereto as **Exhibit C**) is set to begin (a) for the Lease-Current Dinner Theater in the amount and upon the settlement of the sale of the Toby's Site (i.e., Phase I) and (b) for the Final Lease in the amounts and at the times set forth on **Exhibit C** (i.e., Phases II, III, IV and V). Commencing twelve (12) months after the rent stabilizes at Seven Hundred and Eighty-Five Thousand Dollars (\$785,000.00), rent shall increase by 3% and then increase by 3% annually thereafter, as outlined on **Exhibit C**.

D. CCTA Board. On or before the effective date of Phase IV as set forth on **Exhibit C**, the Board of Directors for CCTA will be operated in accordance with the *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector*, which outlines best practices for nonprofit governance, management, policies and procedures and legal compliance to eliminate all actual and potential conflicts of interest and include a representative from:

1. Howard County Economic Development Authority; and
2. Howard County Chamber of Commerce; and
3. Howard County Community College.

New Board members must be appointed and approved in accordance with the Bylaws of CCTA.

E. Debt Service. For contextual purposes only, the County's funding proposal includes approximately \$47.7 million designated General Obligation (GO) bonds to be supported by the property tax increment collected in the Downtown Columbia (DTC) area, and \$7 million GO bonds to be supported by designated program revenues. Any funding allocation from the County is subject to property tax increment available after payment of all debt service on the debt service associated with the 2018 tax increment financing (TIF).

F. Creation of Advisory Board. An advisory board shall be created to collaborate with the County, through the Department, and the non-residential tenants of the Project to ensure that the Department's focus on visual and performing art is maintained and that the programs of the Department are not the same or substantially similar to the programs offered by CCTA within the Project and that said programs are consistent with programs offered in the arts and

cultural field. Members of the advisory board will include a representative from the Department, a representative of each non-residential tenant, and the following:

1. An appointment made by the County Executive;
2. An appointment made by each Council Member; and
3. Representatives from: (a) Howard County Arts Council; (b) Downtown Columbia Arts and Culture Commission; (c) Downtown Columbia Partnership; (d) Howard County Public School System; and (e) Howard County Community College.
4. One other representative recommended by the Department or the County as someone whose input within the arts community will benefit the Project, if needed.

G. CCTA shall provide the County Council, Council Auditor, and the County Executive with:

1. An annual audited financial statement, and
2. Beginning on the effective date of Phase IV as set forth on **Exhibit C**, an annual report of CCTA activities. Such report shall include information to be developed in conjunction with CCTA, the County Council and the County Executive and shall include information such as programing and activities, attendance information for all performances, and number of participants registered in CCTA activities located at the Project.

H. Other CCTA/TDT Commitments. CCTA/TDT agree:

i. To provide the County Council and the County Executive an updated list of Board members of CCTA, including officers, and terms prior to the vote on the TAO;

ii. To provide the County Council and the County Executive with a roster of the CCTA Board members on an annual basis;

iii. To notify the County Council and the County Executive of changes to key leadership positions at CCTA and TDT, including Board President, Treasurer, Toby Orenstein, Harold Orenstein and Mark Minnick;

iv. To promptly notify and provide information to the County Council and the County Executive about any events or other matters that may have a material negative impact on the financial condition of CCTA;

v. That any additional facility design modifications not outlined on the Site Development Plan on file with the Department of Planning and Zoning, approved by the Planning Board in March 2018, must be approved by the Howard County Department of Public Works. The goal is that any such requested modifications are ones that may be easily reconfigured with minimal additional cost to the County if such reconfiguration is needed by the County in the future.

- vi. That no later than closing on the sale of the Toby's Site:
 - (i) the Escrow Account shall be established and funded as required by Section III.B herein; and
 - (ii) the gift and conveyance of TDT's assets to TDT, LLC shall be completed.

I. Other Operational Agreements. CCTA, the County, through the Department, and the Commission shall work together to ensure, through written agreements, that there is a workable operational plan for the Project so their respective uses complement and do not conflict with each other and facilitate the overall long-term success of the entire Project.

- i. The Commission and the County shall enter into a written agreement regarding the operation and maintenance of any common space, including the Garage.
- ii. There shall be a Non-Compete provision between CCTA and the Department limiting each of the parties from providing programming, that will impact the other party's business and revenue generation. The parties shall not offer programs within the Project that are the same or substantially similar to one another. The parties shall meet on a quarterly basis to discuss prospective programming. In the event that either party desires to request a program exception, that party shall notify the other party in writing, or via electronic mail, and the other party shall have fourteen (14) days from receipt to respond. Should the parties have a disagreement on proposed programming, a mutually agreeable independent third party shall make any final decisions.
- iii. CCTA will maintain the Howard County Center for the Arts (the "**Center**") which focuses on all aspects of theatrical arts including theatrical summer camp programming, educational programming and performance programming. The Department agrees to not provide any programming within the area of theatrical arts for those kindergarten-aged and up without the consent of CCTA. CCTA agrees not to provide any programming that is not related to theatrical arts, including but not limited to art classes in the areas of horticulture, home economics (weaving, cooking, crafts), athletic (martial arts, fencing), fine arts (painting, sculpture, photography, architecture), health and wellness (yoga, Zumba, meditation, pilates), and science/technology without the consent of the Department. However, CCTA and the Department agree to meet on a quarterly basis to discuss projected programming to

ensure that all programming offered at the Project does not compete but rather compliments one another.

- iv. Black Box Theaters - CCTA will maintain the Center's focus on theatrical arts youth-oriented performances. The Department may rent out the other black box theater to other performing artists, so long as it is consistent with the provisions of this Section. Adult oriented, non-musical, theatrical programming is not a competing issue.

IV. LAW OF MARYLAND; VENUE

This MOU shall be governed by the laws of the State of Maryland. Any action regarding this MOU shall be filed in the Circuit Court for Howard County, Maryland, or the District Court of Maryland for Howard County.

V. AMENDMENTS

This MOU may be amended only by a written instrument executed and delivered by the parties hereto. The Parties agree to cooperate in good faith to implement the terms of this MOU.

VI. CERTIFICATION; SUCCESSORS AND ASSIGNS

Each person executing this MOU certifies that this MOU has been approved in accordance with its respective organizational documents and applicable law. This MOU shall inure to and be binding upon the parties hereto, and their respective successors and assigns.

VII. HEADINGS

The paragraph headings contained in this MOU are for reference purposes only and shall not affect in any way the meaning or interpretation of this MOU.

VIII. COUNTERPART ORIGINALS; DELIVERY OF MOU.

This MOU may be executed in multiple original counterparts, each of which shall be an original, but all of which together shall constitute one and the same MOU. For purposes of execution and delivery of this MOU, a signature by any party which is delivered by such party to the other party by electronic mail transmission shall be binding upon the delivering party as an original signature to this MOU.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have authorized their representatives to sign and deliver this document.

WITNESS/ATTEST:

**COLUMBIA CENTER FOR THEATRICAL
ARTS, INC.**

By: _____

Janet Davidson Gordon
Chairman of the Board, CCTA

Date: _____

WITNESS/ATTEST:

**TOBY'S-THE DINNER THEATRE OF
COLUMBIA, INC.,**

a Maryland corporation

BY: _____ (SEAL)

Toby Orenstein
President

Date: _____

WITNESS/ATTEST:

TOBY'S GENERAL PARTNERSHIP,

By: _____

Harold Orenstein
General Partner

Date: _____

WITNESS/ATTEST:

**THE HOWARD COUNTY HOUSING
COMMISSION,**

a body corporate and politic,

BY: _____(SEAL)

Peter Engel
Executive Director

Date: _____

(Signature Pages Continue)

WITNESS:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Calvin Ball
County Executive
Date: _____

APPROVED:

Raul Delorme, Director
Department of Recreation and Parks

APPROVED FOR SUFFICIENCY OF FUNDS:

Rafiu Ighile, Director
Department of Finance

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

this _____ day of _____ 202__

Gary W. Kuc
County Solicitor

Reviewing Attorney:

Kristen Bowen Perry
Deputy County Solicitor