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AMENDED AND RESTATED GALLERIA OPERATING AGREEMENT

between

COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY

and

CITY OF ~~KENNESAW, GEORGIA~~POWDER SPRINGS

DATED AS OF [•] 1, 2023

[Original Operating Agreement dated as of December 1, 1991,
And Amended as of October 1, 1996]

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EXHIBIT A - ANNUAL EXCESS TAX PAYMENTS CALCULATION SPREADSHEET

AMENDED AND RESTATED GALLERIA OPERATING AGREEMENT

THIS AMENDED AND RESTATED GALLERIA OPERATING AGREEMENT (this “**Agreement**”) is dated as of [•] 1, 2023, by and between the **COBB-MARIETTA COLISEUM AND EXHIBIT HALL AUTHORITY** (the “**Authority**”), a body corporate and politic created and existing under the laws of the State of Georgia (the “**State**”), and **CITY OF ACWORTH POWDER SPRINGS** (the “**City**”), a municipal corporation created under the laws of the State, and amends and restates in its entirety that certain Operating Agreement, dated as of December 1, 1991 (the “**Original Operating Agreement**”), as amended by the Amendment No. One to Operating Agreement, dated as of October 1, 1996 (the “**1996 Operating Agreement Amendment**”), and the Original Operating Agreement as so amended thereby, the “**Prior Operating Agreement**”).

WHEREAS, the Authority has heretofore been created pursuant to the Cobb-Marietta Coliseum and Exhibit Hall Authority Act (Georgia Laws 1980 p. 4091 *et seq.*, as amended, the “**Authority Act**”) and the Authority is now existing and operating and its members have been duly appointed and entered into their duties;

WHEREAS, the Authority was created for the general purpose of “. . . developing and promoting for the public good in this state the cultural growth, public welfare, education and recreation of the people of this state, including the erection and construction of a building or buildings which shall be public buildings to be used for amusement purposes or educational purposes or a combination of the two, and for fairs, expositions, or exhibitions in connection therewith, and the purchase of lands, easements, rights and lands and franchises for construction of such facility or facilities and for use in connection therewith . . .”;

WHEREAS, pursuant to the authority granted in the Authority Act, the Authority is empowered to undertake, without limitation, “. . . the acquisition, construction, equipping, maintenance and operation of multi-use coliseum and civic center type facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions and other public entertainments, which facilities if acquired or constructed after May 8, 2018 must be managed and operated directly by the authority for its own use and the usual facilities related thereto, including, without limitation, refreshment stands and restaurants, and facilities for the purveying of foods, beverages, publications, souvenirs, novelties, and goods of all kinds, whether operated or purveyed directly or indirectly through concessions, licenses, leases or otherwise, parking facilities or parking areas in connection therewith, recreational centers and areas including, but not limited to, gymnasium and athletic facilities and related buildings, and the usual and convenient facilities appertaining to such undertakings and the extension and improvements of such facilities, acquiring the necessary property therefor, both real and personal and the lease, sale and licensing of any part or all of such facilities, including real and personal property, to any persons, firms or corporations whether public or private so as to assure the efficient and proper development, maintenance, and operation of such facilities and areas, deemed by the Authority to be necessary, convenient, or desirable . . .”;

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State;

WHEREAS, Article IX, Section II, Paragraph III of the State Constitution authorizes the expenditure of public funds by counties and municipal corporations for parks, recreational areas, programs and facilities;

WHEREAS, Article IX, Section III, Paragraph I of the State Constitution (the “**Intergovernmental Contracts Clause**”) authorizes intergovernmental contracts between any “. . .

county, municipality, school district or political subdivision of the state . . . with each other or any other public agency, public corporation, or public authority for joint services, for the provision of services or for joint or separate use of facilities or equipment. . .”;

WHEREAS, pursuant to the Authority Act, the Intergovernmental Contracts Clause of the State Constitution and other applicable provisions of State law, in connection with the Original Operating Agreement, the Authority and the City also entered into that certain Convention Funding Agreement, dated as of December 1, 1991 (the “**Original Funding Agreement**”), as amended as of October 1, 1996 (the “**1996 Funding Agreement Amendment**”, and the Original Operating Agreement as so amended thereby, the “**Prior Funding Agreement**”), as an intergovernmental contract for the provision of services and facilities in connection the hereinafter identified Galleria Project;

WHEREAS, in connection with this Agreement, the Authority and the City also are entering into that certain Amended and Restated Galleria Convention Funding Agreement, dated as of [•] 1, 2023 (the “**Funding Agreement**”), amended and restating in its entirety the Prior Funding Agreement;

WHEREAS, the City is authorized to levy and collect within its boundaries an excise tax upon the furnishing for value of public accommodations (the “**Hotel/Motel Tax**”) pursuant to O.C.G.A. § 48-13-51, as amended (the “**Hotel/Motel Tax Law**”), including in particular, without limitation, O.C.G.A. § 48-13-51(a)(5.1), which Hotel/Motel Tax on the Effective Date hereof is at the rate of eight percent (8%) of the amount of the lodging charges actually collected;

WHEREAS, O.C.G.A. 36-82-60 et seq. (the “**Revenue Bond Law**”) and in particular O.C.G.A. § 36-82-61(4)(e) authorizes the issuance of revenue bonds by governmental bodies for “. . . buildings to be constructed and used for the housing of exhibits for fairs and educational purposes; buildings to be used for the housing of livestock, horses, cattle, swine, poultry and agricultural exhibits for exhibition purposes; the erection and construction of buildings to be used for amusement or educational purposes or a combination of the two; and such buildings to be used for fairs, expositions, or exhibitions in connection therewith . . .”;

WHEREAS, on December 17, 1991, the Authority issued \$48,200,000 original aggregate principal amount of its Revenue Bonds, Series 1991 (the “**Series 1991 Bonds**”) pursuant to the Senior Lien Indenture (as defined hereinafter) in order to finance the acquisition and construction of that certain multi-use civic center, exhibit hall and meeting facilities known as “Cobb Galleria Centre” (together with any improvements, expansions, additions and replacements of such Cobb Galleria Centre, the “**Galleria Project**”) as a public facility to be owned and operated by the Authority, all for the benefit of the residents of Cobb County, Georgia (the “**County**”);

WHEREAS, in order to secure payment of the Series 1991 Bonds and any additional bonds issued under the Senior Lien Indenture, the Authority pledged all revenues derived under the Original Funding Agreement to the payment of principal of and interest on the Senior Lien Bonds, including, without limitation, the City’s payments of 62.5% of its Hotel/Motel Tax revenues (the “**Hotel/Motel Tax Payments**”);

WHEREAS, in connection with the Original Funding Agreement and the issuance of the Series 1991 Bonds issued to finance the acquisition and construction of the Galleria Project, the Authority and the City entered into the Operating Agreement, dated as of December 1, 1991, between the Authority and the City (the “**Original Operating Agreement**”), with respect to the original Galleria Project;

WHEREAS, on May 18, 1993, the Authority issued \$47,965,000 original aggregate principal amount of its Revenue Refunding Bonds, Series 1993 (the “**Series 1993 Bonds**”) in order to refund a portion of the Series 1991 Bonds;

WHEREAS, the City and the Authority entered into the Amendment No. One to Convention Funding Agreement, dated as of October 1, 1996, between the Authority and the City, amending the Original Funding Agreement, and the Amendment No. One to Operating Agreement, dated as of October 1, 1996, between the Authority and the City, amending the Original Operating Agreement (the Original Operating Agreement, as so amended, the “**Prior Operating Agreement**”), and on October 15, 1996, the Authority issued \$22,300,000 original aggregate principal amount of its Junior Lien Revenue Bonds, Series 1996A (the “**1996 Junior Lien Bonds**”), in order to finance certain additions to the Galleria Project;

WHEREAS, on October 19, 1999, the Authority issued \$23,950,000 original aggregate principal amount of its Revenue Bonds, Series 1999 (the “**Series 1999 Bonds**”) in order to finance the construction of an expansion of the Galleria Project;

WHEREAS, on March 15, 2005, the Authority issued \$15,375,000 original aggregate principal amount of its Revenue Refunding Bonds, Series 2005 (the “**Series 2005 Bonds**”) in order to refund a portion of the outstanding Series 1999 Bonds;

WHEREAS, on December 3, 2009, the Authority issued \$14,335,000 original aggregate principal amount of its Junior Lien Revenue Refunding Bonds, Series 2009 (the “**Series 2009 Junior Lien Bonds**”) in order to refund all of the Authority’s then outstanding Series 1996A Junior Lien Bonds;

WHEREAS, the Authority’s outstanding \$12,720,000 aggregate principal amount of Series 1993 Senior Lien Bonds and its outstanding \$6,175,000 aggregate principal amount of Series 2005 Senior Lien Bonds, which together total \$18,895,000 (collectively, the “**Existing Senior Lien Bonds**”), are the Authority’s only outstanding bonds having a senior lien on the Hotel/Motel Tax Payments, and have a final maturity date of October 1, 2026;

WHEREAS, the Authority’s outstanding \$4,265,000 aggregate principal amount of Series 2009 Junior Lien Bonds are the Authority’s only outstanding Junior Lien Bonds under this Agreement (the “**Existing Junior Lien Bonds**”), and after July 1, 2023, the Existing Junior Lien Bonds will be outstanding in the aggregate principal amount of \$3,260,000 with a final maturity date of July 1, 2026;

WHEREAS, pursuant to House Bill 658 of the 2017-2018 General Session of the State General Assembly (“**HB 658**”), which became effective as of July 1, 2018, the expiration of the period of time during which the Hotel/Motel Tax may be levied and collected in the City was extended from not later than December 31, 2028 to not later than December 31, 2053;

WHEREAS, pursuant to Senate Bill 489 of the 2017-2018 General Session of the State General Assembly (“**SB 489**”), which became effective as of May 8, 2018, the Authority Act was amended to limit the types of facilities to be financed by the Authority’s revenue bonds after May 8, 2018 to those facilities that are operated and managed directly by the Authority for its own use;

WHEREAS, the Authority desires to issue additional bonds in the future to be secured in whole or in part by the pledge of Hotel/Motel Tax revenues pursuant to this Agreement;

NOW, THEREFORE, the Authority and the City have agreed to enter this Agreement in order to amend and restate the Prior Operating Agreement in its entirety and have agreed to contemporaneously enter into the Restated Funding Agreement in order to amend and restate the Prior Funding Agreement in its entirety.

IN CONSIDERATION OF Ten Dollars in hand paid, the respective covenants, representations and agreements hereinafter contained and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged by each party hereto, the Authority and the City agree as follows, including, without limitation, that the foregoing premises and Whereas paragraphs shall be, and are hereby declared to be, substantive provisions of this Agreement:

ARTICLE I

DEFINITIONS

In addition to the words and terms elsewhere defined in this Agreement, (a) the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of the words and terms herein defined and (b) all capitalized terms and phrases used herein, but not defined herein, shall have the meanings assigned thereto under the Funding Agreement:

“Agreement” in the context of **“this Agreement”** means this Amended and Restated Galleria Operating Agreement, as the same may be supplemented or amended from time to time hereafter in accordance with Section 7.6 hereof.

“Annual Excess Tax Payments” means with respect to each Fiscal Year commencing with Fiscal Year 2024, the remaining balance amount that would have remained in the Tax Payments Fund at the end of such Fiscal Year after deducting all amounts paid pursuant to subparts (i) through and including (v) of Section 4.2(b) of this Agreement during such Fiscal Year if no other amounts had been withdrawn from the Tax Payments Fund, as determined at the end of each Fiscal Year in accordance with Section 4.2(b)(vi) hereof.

“Annual Excess Tax Payments Above the Cap” means with respect to each Fiscal Year commencing with Fiscal Year 2024, the amount by which the total Annual Excess Tax Payments amount exceeds the amount of the Cap on Authority’s Excess Portion for such Fiscal Year.

“Authority’s Excess Portion” means with respect to each Fiscal Year commencing with Fiscal Year 2024, an amount equal to 62.5% of the Annual Excess Tax Payments for such Fiscal Year, subject to the Cap on Authority’s Excess Portion, provided, such amount shall be subject to the Cap on Authority’s Excess Portion.

“Cap on Authority’s Excess Portion” means with respect to each Fiscal Year commencing with Fiscal Year 2024, the amount equaling 1.25 multiplied by the highest Fiscal Year total Hotel/Motel Tax Payments and Liquor-by-the-Drink Tax payments paid to the Authority by the County and the Cities in the five most recent Fiscal Years.

“City Operating Agreement” and **“City Operating Agreements”** means, each respectively and all collectively, this Agreement, the operating agreements by and between the Authority and each the cities of Acworth, ~~Austell~~[Kennesaw](#), Marietta, Powder Springs and Smyrna and each similar convention funding agreement between the Authority and a city located in the County entered into after the Effective Date hereof.

“City’s Excess Portion” means with respect to each Fiscal Year commencing with Fiscal Year 2024, an amount equal to the City’s Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments for such Fiscal Year.

“Collection Fee” means the collection fee payable to the City in accordance with Section 4.5 of this Agreement for costs incurred by the City in connection with levying, collecting and administering the Hotel/Motel Tax, which collection fee shall be calculated in accordance with Section 4.5 hereof.

“**County**” means Cobb County, Georgia, a political subdivision of the State.

“**County Operating Agreement**” means the Amended and Restated Galleria Operating Agreement, dated as of [•] 1, 2023, between the County and the Authority, as the same may be supplemented or amended from time to time.

“**CT&T**” means Cobb Travel & Tourism, Inc., a Georgia nonprofit corporation, or any successor nonprofit corporation or alternative nonprofit corporation approved by the County and the Authority and satisfying the requirements of the Hotel/Motel Tax Statute with respect to such nonprofit corporation’s expenditure of Hotel/Motel Tax revenues pursuant to a contract with the County or the Authority as a qualified expenditure under the Hotel/Motel Tax Statute.

“**Liquor-by-the-Drink Tax**” means the excise tax levied and collected by the County upon the sale of distilled spirits by-the drink pursuant to the O.C.G.A. Title 3, Chapter 4, Article 5, Part 3, *et seq.*, as amended.

“**Monthly Contract Payments**” means the payments due to the City monthly in accordance with Sections 4.4 of this Agreement.

“**Operating Agreements**” means, collectively, the City Operating Agreements and the County Operating Agreement.

“**Operating Revenue Fund**” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Operating Revenue Fund created pursuant to and governed by Section 4.1 of this Agreement.

“**Project Operating Revenues**” means in the aggregate with respect to all Projects under this Agreement any and all gross revenues, receipts, income, rent, concessions and other money of any nature or in any form whatsoever received by or on behalf of the Authority or accruing to the benefit of the Authority from or in connection with the Galleria Project or any other Financed Project, including, without limitation, revenues from any ground lease, rental agreement, user or occupancy agreement, operating agreement, license or concession agreement, franchise agreement, or any similar or comparable type agreement or arrangement, lease or sale of air rights, any sale, lease or other disposition of naming rights and/or signage rights, or any other lease, sale or disposition of property or assets or any kind, but excluding all Tax Payments from the County or any City.

“**Project Working Capital Reserve**” means funds in an amount equal to the sum of 2.0 multiplied by the monthly average amount of the Authority’s then current Fiscal Year’s estimated operating and maintenance expenses of the Project, which amount the Authority may retain in the Operating Revenue Fund in accordance with Section 4.1(b) hereof.

“**Pro-Rata Share Per H/MT Contributions**” means a pro-rata share of the amount of Hotel/Motel Tax Payments made by the County and all Cities with respect to, as applicable in the context, a calendar month or a Fiscal Year; for example, during Fiscal Year 2022 the City’s Pro-Rata Share Per H/MT Contributions was 4.6% because the City’s total Hotel/Motel Tax Payments with respect to Fiscal Year 2022 equaled \$596,093, which was 4.6% of the total \$13,037,517 of Hotel/Motel Tax Payments made by the County and all Cities to the Authority with respect to such Fiscal Year 2022.

“**R&E Minimum Balance Requirement**” shall have the meaning set forth in Section 4.3(c) hereof.

“Renewal and Expansion Fund” or **“R&E Fund”** means the Renewal and Expansion Fund created pursuant to and governed by Section 4.3 of this Agreement, together with any other reserve funds established by the Authority during the Term of this Agreement serving a comparable purpose as the R&E Fund regardless of how such other reserve fund is labeled or characterized (excluding any debt service reserve funds for Bonds held by a Trustee under an Indenture or under a similar Bond Financing Document, excluding the Project Working Capital Reserve and excluding the reserve funds and renewal and expansion funds established exclusively for other Authority projects such as the Performing Arts Center).

“Tax Payments” means, collectively, the City’s Hotel/Motel Tax Payments required pursuant to Section 4.4(a) or 4.4(b) of the Funding Agreement, the payments of Hotel/Motel Tax by each other City required by its respective City Funding Agreement, and the payments of Hotel/Motel Tax funds and Liquor-by-the-Drink Tax funds by the County required by the County Funding Agreement.

“Tax Payments Fund” means the Cobb-Marietta Coliseum and Exhibit Hall Authority - Galleria Tax Payments Fund created pursuant to and governed by Section 4.2 of this Agreement.

“Term” means the term of this Agreement set forth in Section 7.1 hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations and Agreements by the Authority

. The Authority makes the following representations and agreements as the basis for the undertakings on its part herein contained:

(i) The Authority is a body corporate and politic created and existing under the laws of the State, including in particular the Authority Act and will do or cause to be done all things necessary to preserve and keep in full force and effect its status and existence; the Authority is permitted under the Intergovernmental Contracts Clause of the State Constitution to contract for any period not exceeding fifty years with the City for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide;

(ii) The Authority has the power to enter into this Agreement and to perform all obligations contained herein, is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, by proper action has duly authorized the execution, delivery and performance of this Agreement, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Agreement by it except as shall have been obtained prior to or as of the Effective Date hereof;

(iii) The Authority is empowered specifically (a) to borrow money and to issue its revenue bonds and to use the proceeds thereof for the purpose of paying all or part of the cost of any “project” as defined in the Authority Act as of the time of such issuance or for the purpose of refunding any such bonds of the Authority theretofore issued, and to otherwise carry out its purposes, and to pay all costs of the Authority incident to or necessary and appropriate to such purposes, (b) to make and execute contracts and other instruments necessary to exercise the powers of the Authority, including, without limitation, contracts with the City, and (c) to pledge or assign any properties, revenues, income, tolls, charges, or fees owned or received by the Authority;

(iv) The Authority is not subject to any bylaw or contractual or other limitation or provision of any nature whatsoever which in any way limits, restricts, or prevents it from entering into this Agreement and performing its obligations hereunder;

(v) The issuance and sale of the Bonds, the execution and delivery of this Agreement, the Indentures and any other Authority Bond Document (as defined in the Funding Agreement), and the performance of all covenants and agreements of the Authority contained in this Agreement and the other Authority Bond Documents and of all other acts and things required under the Constitution and laws of the State to make this Agreement and each other Authority Bond Document a valid and binding obligation of the Authority in accordance with its respective terms are authorized by law and have been or will be duly authorized by proceedings of the Authority adopted at public meetings thereof duly and lawfully called and held;

(vi) This Agreement, the Indentures and the other Authority Bond Documents have been or will be duly executed and delivered by the Authority and do or will constitute its legal, valid, and binding obligation enforceable in accordance with their respective terms, except as enforcement may be limited by the application of equitable principles and matters of public policy;

(vii) The authorization, execution, delivery, and performance by the Authority of this Agreement, the Indentures and the other Authority Bond Documents and compliance by the Authority with the respective provisions hereof and thereof do not and will not violate the Constitution or the laws of the State or constitute a breach of or a default under, any other law, court order, administrative regulation or legal decree, or any agreement or other instrument to which it is a party or by which it is bound or subject;

(viii) There is no litigation or proceeding pending, or to the knowledge of the Authority threatened, against the Authority or against any person having a material adverse effect on the right of the Authority to execute this Agreement, the Funding Agreement, the Indentures or the other Authority Bond Documents or the ability of the Authority to comply with any of its obligations under this Agreement, the Funding Agreement, the Indentures or the other Authority Bond Documents; and

(ix) The Authority shall make the payments required pursuant to the Funding Agreement or this Agreement, included, without limitation, the payments to the City required under Sections 4.1, 4.2, 4.3, 4.4 and 4.5 hereof, all at the times and in the amounts provided in this Agreement.

Section 2.2 Representations and Agreements by the City

. The City makes the following representations and agreements:

(i) The City is a municipal corporation duly created and existing under the laws of the State; the City is permitted under the Intergovernmental Contracts Clause of the State Constitution to contract for any period not exceeding fifty years with the Authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide;

(ii) The City has the power and authority to enter into and execute and deliver this Agreement, and, by proper action of its governing body, has authorized the execution and delivery of this Agreement and the taking of any and all such actions as may be required on its part to carry out, give effect to, and consummate the transactions contemplated by this Agreement, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Agreement by it except as shall have been obtained as of the Effective Date hereof;

(iii) This Agreement has been duly executed and delivered by the City and constitutes its legal, valid, and binding obligation enforceable in accordance with its terms, except as enforcement may be limited by the application of equitable principles and matters of public policy;

(iv) The authorization, execution, delivery, and performance by the City of this Agreement and compliance by the City with the provisions thereof do not violate the Constitution or the laws of the State relating to the City or constitute a breach of or a default under, any other law, court order, administrative regulation or legal decree, or any agreement or other instrument to which it is a party or by which it is bound;

(v) There is no litigation or proceeding pending, or to the knowledge of the City threatened, against the City or any other person having a material adverse effect on the right of the City to execute this Agreement or the Funding Agreement, or its ability to comply with any of its obligations under this Agreement or the Funding Agreement; and

(vi) The City has, pursuant to resolutions and ordinances duly adopted by its governing body, authorized the levy and collection of the Hotel/Motel Tax, and the money derived from such levy shall be used and applied as provided in the Funding Agreement and this Agreement during the Term of this Agreement.

ARTICLE III

ISSUANCE OF BONDS; CONSTRUCTION AND OPERATION OF FINANCED PROJECTS

Section 3.1 Bonds Proposed after Effective Date.

The Authority may issue Additional Senior Lien Bonds after the Effective Date in accordance with the Senior Lien Indenture without any further approval of the City; provided, however, no such Additional Senior Lien Bonds may mature later than October 1, 2053.

Section 3.2 Operation of Project; Payment of Operating Expenses; Rate Covenant.

(a) The Authority at all times (i) shall operate the Project economically, efficiently and consistent with good business practices and in compliance with the terms of the Authority Act, (ii) shall maintain the Project in good condition and shall promptly repair, replace and restore any damage to or destruction of the Project or any portion thereof, (iii) shall maintain adequate insurance with respect to all Projects and all operations of the Authority in accordance with Section 6.9 hereof, and (iv) shall cause all Projects to be maintained and operated so as to make the benefits thereof generally available to the residents of the County.

(b) The Authority shall pay or cause to be paid from Project Operating Revenues all reasonable and necessary costs of operating, maintaining and repairing the Project including salaries, wages, employee benefits, the payment of any contractual obligations incurred pertaining to the operation of the Project, cost of materials and supplies, rentals of leased property, real or personal, insurance premiums, audit fees, any incidental expenses of the Authority and such other charges as may properly be made for the purpose of operating, maintaining and repairing the Project in accordance with sound business practice.

(c) The Authority shall cause the Project to be operated and maintained economically, efficiently and consistent with good business practices and in compliance with the terms of the Authority Act. The Authority shall at all times maintain the Project in good condition and repair and shall

promptly repair, replace or restore any damage or destruction to the Project or cause the proceeds from insurance from such damage or destruction to be applied in accordance with the terms hereof. It shall also cause the Project to be maintained and operated so as to make its benefits generally available to the residents of the County, and it shall establish and maintain, or cause to be established and maintained, a schedule of rates, fees and charges for the use of the facilities constituting the Project in accordance with the terms hereof; provided, however, this subsection (c) shall not preclude the Authority from deviating from such schedule and/or negotiating specific rates, fees and charges for specific events and uses.

ARTICLE IV

CREATION OF FUNDS; FLOW OF FUNDS

Section 4.1 Operating Revenue Fund.

(a) The Authority shall create and maintain a special fund designated as the “Cobb-Marietta Coliseum and Exhibit Hall Authority – Galleria Operating Revenue Fund” (the “**Operating Revenue Fund**”) separate and apart from other funds and accounts of the Authority.

(b) The Authority promptly shall collect and deposit into the Operating Revenue Fund and shall use and apply in accordance with this Section 4.1(b) all revenues of any kind derived from or in connection with the ownership or operation of the Project; provided, however, in no event shall Tax Payments or funds received by or on behalf of the Authority derived from or in connection with Tax Payments, including, without limitation, payments received by the Authority from the Trustee under the Senior Lien Indenture or the Junior Lien Trustee, be deposited into the Operating Revenue Fund, and instead such funds shall be deposited into the Tax Payments Fund in accordance with Section 4.2 hereof; provided, however, in accordance with Section 4.2(b) hereof certain specified Authority Excess Portion funds may be transferred from the Tax Payment Fund to the Operating Revenue Fund in accordance with such Section 4.2(b), and further provided, however, in accordance with Section 4.3 hereof certain specified Authority Excess Portion funds may be transferred from the Renewal and Expansion Fund to the Operating Revenue Fund in accordance with Section 4.3(d)(v) hereof. The Authority shall apply money deposited into the Operating Revenue Fund only for the following purposes in the following order of priority:

(i) First, to the payment of operating and maintenance expenses of the Project in accordance with Section 3.2 hereof and payment of all administrative expenditures related to the Bonds such as Trustee’s fees, rating agency fees, rebate analyst’s fees and arbitrage rebate payments;

(ii) Second, to the payment of any amounts for the promotion of tourism, convention or trade shows in the County, including, without limitation, any such amounts required under agreements with CT&T, the State of Georgia, a department of the State of Georgia, a convention and visitor’s bureau created by local act of the Georgia General Assembly for a municipality or county, a private sector non-profit organization or some combination of the foregoing;

(iii) Third, the Authority may retain in the Operating Revenue Fund an amount not to exceed the Project Working Capital Reserve permitted amount; and

(iv) Fourth, all remaining funds in the Operating Revenue Fund shall be transferred monthly to the Renewal and Expansion Fund.

Section 4.2 Tax Payments Fund.

(a) The Authority shall create and maintain a special fund designated as the “Cobb-Marietta Coliseum and Exhibit Hall Authority–Galleria Tax Payments Fund” separate and apart from other funds and accounts of the Authority, and the depository bank’s records thereof shall be available for inspection on behalf of the City during normal business hours.

(b) The Authority shall deposit into the Tax Payments Fund all Tax Payments and all payments received by the Authority from the Senior Lien Trustee under the Senior Lien Indenture or from the Junior Lien Trustee under the Junior Lien Indenture derived from or in connection with Tax Payments. The Authority shall apply money deposited into the Tax Payments Fund for the following purposes in the following order of priority applying the following specified funds at the following times:

(i) First, monthly on or before the 21st day of each calendar month, payment to the Senior Lien Trustee for deposit into the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture (as such Fund and Accounts or functionally equivalent funds and accounts are identified in the Senior Lien Indenture) in the event that in any month there is a deficiency in the amount required to be on deposit in the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture, applying first all available Hotel/Motel Tax funds, and only if such funds are insufficient, then apply available Liquor-by-the-Drink Tax funds paid to the Authority by the County;

(ii) Second, for so long as the Junior Lien Bonds remain outstanding, monthly on or before the 21st day of each calendar month, payment to the Junior Lien Trustee for deposit into the Tax Payments Account of the Junior Lien Sinking Fund under the Junior Lien Indenture (as such Fund and Account or functionally equivalent funds and accounts are identified in the Junior Lien Indenture) in the event that in any month there is a deficiency in the amount required to be on deposit in the Tax Payments Account of the Junior Lien Sinking Fund under the Junior Lien Indenture, applying first all available Hotel/Motel Tax funds, and only if such funds are insufficient, then apply available Liquor-by-the-Drink Tax funds paid to the Authority by the County;

(iii) Third, monthly on or before the 22nd day of each calendar month, payment to the County and the Cities based on the amount due the County and due each of such Cities (A) the Monthly Contract Payments due the City pursuant to Section 4.4 hereof, (B) the monthly contract payments (if any) due the other Cities pursuant to their respective City Operating Agreements and (C) the monthly contract payment due the County under the County Operating Agreement, applying first all available Hotel/Motel Tax funds, and only if such funds are insufficient, then apply available Liquor-by-the-Drink Tax funds paid to the Authority by the County, and any deficiency in the amount of such Monthly Contract Payments shall remain due and payable, shall accumulate and shall be added to the next succeeding Monthly Contract Payments until paid in full;

(iv) Fourth, monthly on or before the 22nd day of each calendar month, payment pro-rata (A) to the City its Collection Fee pursuant to Section 4.5 hereof, (B) to the other Cities the collection fee (if any) due to such Cities pursuant to the respective City Operating Agreements, and (C) to the County, the collection fee due to the County pursuant to the County Operating Agreement; in the event the amount of specified funds on deposit in the Tax Payments Fund is not sufficient to pay in full when due such Collection Fee, payment of such amounts shall be made pro-rata to the County and the applicable Cities based on the amount due

the County and due each of such Cities (if any), and any deficiency in the amount of such Collection Fee payments shall remain due and payable, shall accumulate and shall be added to the next succeeding Collection Fee payments until paid in full;

(v) Fifth, to cash amounts payable monthly by the Authority to CT&T pursuant to a contract between the Authority and CT&T or other amounts required under agreements for the promotion of tourism, convention or trade shows in the County in accordance with the Hotel/Motel Tax Statute, with State of Georgia, a department of the State of Georgia, a convention and visitor's bureau created by local act of the Georgia General Assembly for a municipality or county, a private sector non-profit organization or some combination of the foregoing, provided, however, no money derived from the Liquor-by-the-Drink Tax shall be used for this purpose, and further provided, however, no funds shall be applied to pay or reimburse the Authority for the value of any non-cash in-kind consideration granted by the Authority to CT&T or any other entity such as the value of free or complimentary office space, and the value of any such non-cash in-kind consideration shall not be included in any calculation under this Agreement or the Funding Agreement; and

(vi) Sixth, provided all amounts payable in accordance with subparts (i) through and including (v) of this Section 4.2(b) have been paid in full, monthly no earlier than the 23rd day of each calendar month, (A) for Fiscal Year 2023, transfer to the R&E Fund, the balance in the Tax Payments Fund, and (B) beginning upon the commencement of Fiscal Year 2024 and continuing throughout the Term of this Agreement, (B) transfer to the R&E Fund no more than 62.5% of the balance remaining in the Tax Payments Fund after the payments pursuant to subparts (i) through and including (v) of this Section 4.2(b), provided, however, each such monthly transfer shall be subject to an annual accounting at the end of each Fiscal Year to determine the amount that would have remained in the Tax Payments Fund at the end of each Fiscal Year after deducting all amounts paid pursuant to subparts (i) through and including (v) of this Section 4.2(b) if no other amounts had been withdrawn (such Fiscal Year end remaining balance amount for each respective Fiscal Year is referred to herein as the "Annual Excess Tax Payments"), which calculation shall be done consistent with the example set forth in the Annual Excess Tax Payments Calculation Spreadsheet attached hereto as **Exhibit A**; and the Authority shall be entitled to transfer to the R&E Fund with respect to each Fiscal Year no more than 62.5% of the Annual Excess Tax Payments (such 62.5% amount for each respective Fiscal Year is referred to herein as the "Authority's Excess Portion"), provided further, however, in each Fiscal Year commencing with respect to Fiscal Year 2024, the amount the Authority may transfer to the R&E Fund shall be further restricted by and shall not exceed the amount equal to 1.25 multiplied by the highest Fiscal Year total Hotel/Motel Tax Payments and Liquor-by-the-Drink Tax Payments paid to the Authority by the County and the Cities in the five most recent Fiscal Years (the "Cap on Authority's Excess Portion"); and

(vii) Seventh, commencing with respect to Fiscal Year 2024 and continuing throughout the Term of this Agreement, annually no later than 60 days after the end of each such Fiscal Year, (w) payment to the City of the City's Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments (the amount of the City's Pro-Rata Share Per H/MT Contributions of 37.5% of the Annual Excess Tax Payments for each respective Fiscal Year is referred to herein as the "City's Excess Portion"), (x) payment to the County of its Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments due under the Count Operating Agreement and to each of the other Cities their respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments, if due under the respective City Operating Agreement, (y) payment to the City of its Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap in such Fiscal Year, and (z) payment to the

County of its Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap and, if and to the extent applicable under the respective City Operating Agreement, payment to each other City of its respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap; and provided further, no portion of the Annual Excess Tax Payments shall be paid to the County or to any of the Cities to the extent such payment would result in the balance in the Renewal and Expansion Fund being less than the R&E Minimum Balance Requirement determined in accordance with the limitations set forth in Section 4.3(d)(vii) hereof.

(a) Attached hereto as **Exhibit A** is the Annual Excess Tax Payments Calculation Spreadsheet.

(b) In no event shall funds in the Tax Payments Fund be applied except as explicitly set forth in this Section 4.2.

Section 4.3 Renewal and Expansion Fund

(a) The Authority shall create and maintain a special fund designated as “Cobb-Marietta Coliseum and Exhibit Hall Authority–Galleria Renewal and Expansion Fund” (the “**Renewal and Expansion Fund**”) separate and apart from other funds of the Authority.

(b) Pursuant to Section 4.1(b)(iv) hereof, the Authority shall transfer to the Renewal and Expansion Fund monthly all money remaining in the Operating Revenue Fund (except the Project Working Capital Reserve amount and except revenues received but not earned during the respective period).

(c) No withdrawal shall be made from the Renewal and Expansion Fund except as permitted under this Section 4.3(c) unless the remaining balance in the Renewal and Expansion Fund will equal no less than \$4,000,000 (the “R&E Minimum Balance Requirement”). In the event any withdrawal from the Renewal and Expansion Fund would cause the balance in the Renewal and Expansion Fund to be less than the R&E Minimum Balance Requirement, then withdrawals shall be made only for the purposes set forth in subparts (i) through and including (iv) of Section 4.3(d) hereof and transfers to the Operating Revenues Fund shall be made only to pay specific operating expenses expressly determined by the Authority to be necessary for required operations after depletion of the Project Working Capital Reserve and only to pay specific capital expenditures expressly determined by the Authority to be necessary for required emergency capital improvements or emergency repairs. In the event the R&E Minimum Balance Requirement is satisfied and will remain satisfied following proposed withdrawals, then the Authority shall disburse funds from the Renewal and Expansion Fund in accordance with all subparts of Section 4.3(d) hereof.

(d) The Authority shall disburse funds from the Renewal and Expansion Fund for the purposes set forth in subparts (i), (ii), (iii) and (iv) when provided hereinafter in the stated order of priority; and to the extent of available money in the Renewal and Expansion Fund and subject to and in accordance with Section 4.3(c) hereof, the Authority may disburse fund from the Renewal and Expansion Fund for any purpose set forth hereinafter:

(i) First, payment to the Senior Lien Trustee for deposit into the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture in the event that in any month there is a deficiency in the amount required to be

on deposit in the Debt Service Account or the Debt Service Reserve Account of the Senior Lien Sinking Fund under the Senior Lien Indenture;

(ii) Second, for so long as the Junior Lien Bonds remain outstanding, monthly on or before the 21st day of each calendar month, payment to the Junior Lien Trustee for deposit into the Tax Payments Account of the Junior Lien Sinking Fund under the Junior Lien Indenture in the event that in any month there is a deficiency in the amount required to be on deposit in the Tax Payments Account of the Junior Lien Sinking Fund under the Junior Lien Indenture;

(iii) Third, to the payment of any City Monthly Contract Payment payable in accordance with Section 4.4 hereof that has not been paid in full when due;

(iv) Fourth, to the payment of any City Collection Fee payable in accordance with Section 4.5 hereof that has not been paid in full when due;

(v) Fifth, transfer to the Operating Revenue Fund amounts required to pay operating and maintenance expenses of the Galleria Project and any other Financed Project to the extent money in the Operating Revenue Fund are not sufficient for such purpose;

(vi) Sixth, in case of an emergency having a major effect upon a Financed Project caused by some extraordinary occurrence that makes it necessary to use such funds for the alleviation or removal of such effects and insufficient money is available in the Operating Revenue Fund to meet such emergency; and

(vii) Seventh, payment of the costs of capital improvements, replacements, additions, expansions, renovations and improvements and acquiring equipment and paying the cost of any architectural or engineering studies, surveys or plans and specifications pertaining to the future development or expansion of the Project, provided, however, such expenditures shall not reduce the balance in the R&E Fund to less the R&E Minimum Balance Requirement and provided further, however, no payment shall be made under this subsection (vii) if the making of such payment would jeopardize the ability of the Authority to make the payment in full of (w) the County's Excess Portion of the Annual Excess Tax Payments, (x) each City's respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments, (y) the County's Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap, and (z) each City's respective Pro-Rata Share Per H/MT Contributions of the Annual Excess Tax Payments Above the Cap, all in accordance with Section 4.2(b)(vii) hereof, and provided further, however, specific capital expenditures expressly determined by the Authority to be necessary for required emergency capital improvements or emergency repairs shall be an exception to the provisions of preceding provisos in this subsection (vii).

Section 4.4 Payment of City's Monthly Contract Payments

. The Authority shall repay to the City monthly an amount equal to 40 percent of the Hotel/Motel Tax paid by the City pursuant to Section 4.4(a) or 4.4(b) of the Funding Agreement (such 40% being the "Monthly Contract Payment"). In the event that an increase in Hotel/Motel Tax is payable due to an expansion of the corporate limits of the City as provided in Section 4.3 of the Funding Agreement, the amount payable to City as the Monthly Contract Payment shall be increased to an amount equal to 62.5 percent of the Hotel/Motel Tax paid which is attributable solely to the Hotel/Motel Tax collected within the additional area included within the City. The Authority shall make such payment to the City from money on deposit in the Tax Payments Fund in accordance with Section 4.2(b)(iii) hereof promptly following the Authority's payment to the Senior Lien Trustee in accordance with Section

4.2(b)(i) and, so long as applicable, to the Junior Lien Trustee pursuant to Section 4.2(b)(ii), or if necessary from money on deposit in the Project Operating Fund in accordance with Section 4.1(b)(ii) hereof or from money on deposit in the Renewal and Expansion Fund in accordance with Section 4.3(c)(iii) hereof. Any deficiency in the amount of the Monthly Contract Payment to the City required under this Section 4.4 shall remain due to the City, shall accumulate and shall be added to the next succeeding payment due to the City under this Section 4.4 until paid in full.

Section 4.5 Payment of City’s Collection Fee

. The Authority shall pay to the City monthly a Collection Fee for costs incurred by the City in connection with levying, collecting and administering the Hotel/Motel Tax. The Authority shall make the payment from money on deposit in the Tax Payments Fund in accordance with Section 4.2(b)(iv) hereof promptly following the Authority’s payment to the Senior Lien Trustee in accordance with Section 4.2(b)(i) and, so long as applicable, to the Junior Lien Trustee pursuant to Section 4.2(b)(ii), or if necessary from money on deposit in the Project Operating Fund in accordance with Section 4.1(b)(ii) hereof or from money on deposit in the Renewal and Expansion Fund in accordance with Section 4.3(c)(iii) hereof. The Collection Fee payable to the City hereunder shall be in an amount equal to the product of all Tax Payments made by the City during each applicable calendar month, less amounts paid to the City pursuant to Section 4.4 hereof during such month, multiplied by five percent (5%). Any deficiency in the amount of the payment to the City required under this Section 4.5 shall remain due to the City, shall accumulate and shall be added to the next succeeding payment due to the City under this Section 4.5 until paid in full.

ARTICLE V

SPECIAL COVENANTS OF THE CITY AND THE AUTHORITY

Section 5.1 Hotel/Motel Tax Budget Plan, and Quarterly and Annual Accounting

(a) In accordance with O.C.G.A. 48-13-51(a)(9)(A), prior to the commencement of each Fiscal Year during the Term of this Agreement, pursuant to the Hotel/Motel Tax Law the City shall adopt a Hotel/Motel Tax Budget Plan specifying how the City’s anticipated Hotel/Motel Tax receipts will be expended in accordance with the expenditure requirements of O.C.G.A. 48-13-51(a)(5.1) during the upcoming Fiscal Year. Prior to adoption of the budget plan, the City shall obtain and the Authority shall provide a budget for expenditures to be made by the Authority and such budget shall be a part of the City’s budget plan.

(b) In accordance with O.C.G.A. 48-13-51(a)(9)(B)(i), the City’s determination of whether the expenditure requirement under O.C.G.A. 48-13-51(a)(5.1) was satisfied for each Fiscal Year shall be prominently reflected in the audit report of the City. The calculation for determining whether the expenditure requirements have been met shall be determined by (i) calculating the amount of funds expended or contractually committed for expenditure during the Fiscal Year and (ii) expressing such amount as a percentage of Hotel/Motel Tax receipts during the Fiscal Year.

Section 5.2 Reports to Department of Community Affairs

(a) .

The City shall file annually with the State Department of Community Affairs a report specifying the rate of taxation and amounts collected and expended pursuant to the Hotel/Motel Tax Law and any other information which may be required by the Department of Community Affairs pursuant to the Hotel/Motel Tax Law.

ARTICLE VI

SPECIAL COVENANTS AND AGREEMENTS OF THE AUTHORITY

Section 6.1 Release Covenant

. The Authority covenants and agrees with the City that the City shall not be liable for, and to the full extent permitted by law the Authority shall hold the City harmless from, any and all claims by or on behalf of any person arising from: (1) the conduct, operation or management of, or from any work or thing done in or on, any Project; (ii) any condition of any Project, (iii) any act of negligence, malfeasance or misconduct of the Authority or of any agents, contractors, servants, employees or licensees of the Authority or of any lessee or tenant of the Authority; and (iv) any loss or damage to property or any injury to or death of any persons occurring on or about or resulting from any defect in any Project.

Section 6.2 Financial Statements

. The Authority will have a certified audit performed at the end of each Fiscal Year by a certified public accountant and will cause such audit to be completed and delivered to the City promptly upon completion and in any event within 120 days of the end of the Fiscal Year. The Authority will furnish the City with a copy of its audited financial statements promptly upon completion of the annual audit.

Section 6.3 Financial Information

. The Authority shall furnish to the City upon written request any monthly financial statements prepared by or on behalf of the Authority's staff for presentation to the Authority.

Section 6.4 Rules and Regulations

. The Authority covenants and agrees that (i) it will enforce or cause to be enforced reasonable rules and regulations governing the Project and the operation thereof, (ii) all compensation, salaries, bonuses, fees and wages paid or caused to be paid by it in connection with the operation, repair and maintenance of the Financed Project will be reasonable, (iii) no more persons will be employed than are necessary, (iv) that it will operate in an efficient and economical manner, (v) it will at all times maintain or cause to be maintained the Project in good repair and in sound operating condition, and will make or cause to be made all necessary repairs, renewals and replacements thereto, and (vi) it will comply or cause to be complied with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to such undertaking and enterprise.

Section 6.5 Contracting Procedure

. The Authority hereby covenants and agrees that any contract relating to the acquisition, construction, installation, extension, improvement, maintenance or repair of the Financed Project shall be procured in accordance with applicable law.

Section 6.6 Granting of Easements

. The Authority may at any time or times cause to be granted easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project and may cause to be released existing easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project for reasonable and adequate consideration. In connection with any such grant or any sale permitted hereunder, if any, the Authority agrees that it shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or asset.

Section 6.7 Discharge of Liens

. The Authority will promptly pay, or cause to be discharged, or will make adequate provisions to satisfy and discharge, within 60 days after the same shall accrue, all lawful claims and demands, which, if unpaid, might by law become a lien upon the Project, or any part thereof, or upon the revenues therefrom; provided, however, that nothing contained in this Section shall require the Authority to pay, or cause to be discharged, or make provision for, any such lien or charge, so long as the validity thereof shall be contested in good faith with due diligence and by appropriate legal proceedings.

Section 6.8 Maintenance of Insurance; Damage; Destruction or Condemnation of Financed Projects

(a) The Authority will carry adequate public liability, fidelity, and property insurance with respect to the Project, with reasonable deductible amounts as applicable; all such policies shall be for the benefit of and made payable to the Authority; and the Authority will provide copies of such policies to the City upon written request.

(b) The proceeds of the Authority’s property insurance coverage shall be available for and shall be applied to the repair and replacement of the damaged or destroyed property; provided, that in the event the Authority shall obtain a certification of an independent architect or engineer to the effect that the applicable Project cannot be repaired to a condition permitting its operation substantially at the level of operation prior to such damage or destruction, then the proceeds of such coverage shall be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay principal and interest on the applicable Bonds then outstanding or, if such certification is to the effect that the applicable Project may be operated substantially at the level of operation prior to such damage or destruction without such repair or replacement, then the proceeds may be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay the principal of or interest on the applicable Bonds on the next succeeding payment date. Except to the extent such proceeds are payable to third parties, the proceeds of the performance and payment bonds or other insurance during construction shall be available for and shall, to the extent necessary, be applied to the completion of the applicable Project and of any renewal, replacement, addition, extension, or improvement to such Project in connection with which such coverage was obtained, but to the extent not so used shall be deposited in, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay the principal of or interest on the applicable Bonds on the next succeeding payment date.

(c) All insurance policies or other evidences of the coverage required hereunder shall be open to inspection of the City and its respective duly authorized agents, accountants, attorneys, experts and representatives at reasonable times and upon reasonable request.

(d) In the event the Project or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Authority shall apply the proceeds of any such condemnation award to restore the Project or portion thereof to substantially the same condition as before such taking; provided, that if the Authority shall obtain a certification of an independent architect or engineer to the effect that the Project or portion thereof cannot be restored to a condition permitting its operation at substantially the level of operation prior to such taking, then the proceeds of such condemnation award shall be deposited to, as applicable with respect to such portion of the Project, the Senior Lien Sinking Fund and used to pay principal and interest on the applicable Bonds then outstanding or, if such certification is to the effect that such portion of the Project may be operated substantially at the level of operation prior to such taking without such restoration, then the proceeds of such condemnation award may be deposited to, as applicable with respect to such Project, the Senior Lien Sinking Fund and used to pay the principal of or interest on the applicable Bonds on the next succeeding payment date.

Section 6.9 Books and Records

. The Authority covenants that it will keep the funds and accounts of the Tax Payments, the Bonds, and the Project separate from all other funds and accounts of the Authority, or any of its departments, and that it will keep accurate records and accounts of all items of cost and all expenditures relating to the Project, and of the revenues collected and the application thereof, and that it will keep said records and accounts with respect to its physical properties in such manner that it will be possible at all times to identify both the amounts and the terms of all additions and retirements. The City and its respective agents, accountants, attorneys, engineers, experts and representatives shall have the right, at reasonable times and upon reasonable notice, to inspect all books and records of the Authority, whether in the Authority's possession or otherwise accessible by the Authority, relating to the Tax Payments, the Bonds, and the Project.

Section 6.10 Access to the Project

. The Authority agrees that the City and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project at all reasonable times and on reasonable notice.

Section 6.11 Encumbrance or Sale of any Portion of the Project

. So long as any of the Bonds shall be outstanding and unpaid, the Authority will not encumber the Project or any part thereof, and it will not sell or otherwise dispose of the Project or any part thereof, except it may sell the Project as a whole, or substantially as a whole, to the State, the County or the Cities or to any other public body or authority authorized to own or operate the Project only if the proceeds of such sale will be at least sufficient to provide for the defeasance of all Bonds in accordance with the respective Indenture and to pay all amounts due to the City under this Agreement or the Funding Agreement, and provided that the proceeds of any such sale to the extent necessary shall be deposited with the Trustee in trust and applied by it to the defeasance of all Bonds in accordance with the respective Indenture and payment of all amounts due to the City. Nothing contained herein, however, shall preclude sale of a part of a Project (a) in the ordinary course of business with respect to equipment no longer needed for the operating of such Project, or (b) in the event the sale would not in any way materially adversely affect the operations or revenue producing capability of the Financed Project, and (ii) the proceeds from such sale will be applied to payment of all amounts due to the City and the retirement of an agreed-upon pro-rata portion of the then outstanding Bonds (as agreed by the City and the Authority) or as otherwise expressly approved in writing by the City.

Section 6.12 Employment of Project Supervisor

. The Authority will employ an experienced Project Supervisor during the construction of any additions, extensions or improvements to the Galleria Project or any other Financed Project for the purpose of supervising such construction of such Project and such additions, extensions and improvements thereof.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Effective Date and Term of Agreement.

This Agreement shall be effective as of the Effective Date hereof. The Term of this Agreement shall commence on the Effective Date and shall expire and terminate on the first to occur of the following, in each case provided that all Excess Portion of all Annual Excess Tax Payments and all other amounts owed to the City under this Agreement or under the Funding Agreement have been paid in full (including, without limitation, the Excess Portion of the Annual Excess Tax Payments with respect to the Fiscal Year during which the Term ends): (i) the first date on which no Existing Senior Lien Bonds and no Existing Junior Lien Bonds remain outstanding in the event no Additional Bonds have been issued in accordance with this Agreement and the Funding Agreement by September 30, 2026 or (ii) the first date on which no Additional Bonds remain outstanding, whether by full and final payment or by defeasance in accordance with the Senior Lien Indenture, which date shall be no later than the final maturity date of any Additional Bonds issued after the Effective Date hereof; provided, however, in no event shall the Term of this Agreement extend beyond December October 1, 2053.

Section 7.2 Independent Contractor

. In performing this Agreement, the Authority is acting as an independent contractor. The City shall not have any power to control the means, methods or techniques by which the Authority undertakes the activities or projects contemplated by this Agreement, except as may be otherwise expressly provided in this Agreement.

Section 7.3 No Interest in City

. By virtue of this Agreement, the City shall not have or hereafter acquire any legal or equitable interest of any nature in, under or to (i) any part of the property, real or personal, tangible or intangible, comprising or used in the Financed Projects, (ii) the leases, licenses, contracts, accounts or other intangible rights or obligations acquired or incurred by the Authority in connection with the acquisition, construction, improvement, equipping or operation of the Financed Projects, or (iii) the operating revenues of the Financed Projects except as otherwise agreed to between the City and the Authority; provided, however, the foregoing shall not impair or adversely affect the covenants of the City in this Agreement, the Funding Agreement or any other agreement between the Authority and the City with respect to any of the foregoing, and the City's right to enforce this Agreement and to require specific performance of the Authority's covenants and agreements hereunder.

Section 7.4 Third Party Beneficiaries

. Nothing in this Agreement is intended or shall be deemed to confer any interest in this Agreement or benefit on persons not named parties to this Agreement.

Section 7.5 No Additional Waiver Implied by One Waiver

. If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.6 Amendment

. This Agreement may be amended or supplemented only by a formal written amendment or supplement duly approved by the respective governing body of each party and duly executed on behalf of the Authority and the City. No consent or agreement of any person not a party to this Agreement (including the Trustee or bondholders) shall be required for amendment of this Agreement.

Section 7.7 Agreement to Pay Attorneys' Fees and Expenses

(a) In the event the City is determined to have defaulted under any of the provisions of this Agreement and the Authority employs attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it shall on demand therefor pay to the Authority the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Authority.

(b) In the event the Authority is determined to have defaulted under any of the provisions of this Agreement and the City employs attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Authority herein contained, the Authority agrees that it shall on demand therefor pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

Section 7.8 Notices

. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person or when sent by registered courier or registered over-night delivery service or when mailed by registered or certified mail, return receipt requested, in each case with postage or other charges prepaid, to the parties hereto at the following addresses or such other address designated by such party in writing:

Authority: Cobb-Marietta Coliseum and Exhibit Hall Authority
Two Galleria Parkway
Atlanta, Georgia 30339
Attention: Executive Director

City: City of ~~Kennesaw~~[Powder Springs](#)
[4426 Marietta Street](#)
[Powder Springs, Georgia 30127](#)
~~2521 J.O. Stephenson Ave.~~
~~Kennesaw, Georgia 30144~~
Attention: ~~City Manager~~[Mayor](#)

Section 7.9 Binding Effect

. This Agreement shall inure to the benefit of and shall be binding upon the Authority, the City

and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

Section 7.10 Severability

. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.11 Execution Counterparts

. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.12 Captions

. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Operating Agreement.

Section 7.13 Law Governing Operating Agreement

. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

IN WITNESS WHEREOF, the Authority and the City have caused this Amended and Restated Galleria Operating Agreement to be executed and delivered by their respective duly authorized officers to be effective as of the Effective Date hereof, and their respective seals to be hereunto affixed and attested by their duly authorized officers, all to be effective as of the Effective Date set forth hereinabove.

(AUTHORITY SEAL)

**THE AUTHORITY:
COBB-MARIETTA COLISEUM AND EXHIBIT
HALL AUTHORITY**

Attest:

Secretary-Treasurer

By: _____
Chairman

(CITY SEAL)

**THE CITY:
CITY OF ~~KENNESAW, GEORGIA~~ POWDER
SPRINGS**

Attest:

City Clerk

By: _____
Mayor

[Remainder of page intentionally left blank]

EXHIBIT A: ANNUAL EXCESS TAX PAYMENTS CALCULATION SPREADSHEET

**Cobb-Marietta Coliseum and Exhibit Hall Authority
Annual Excess Tax Payment (AETP)
FY2022**

	HMT Cobb	HMT Marietta	HMT Smyrna	HMT Acworth	HMT Austell	HMT Kennesaw	HMT Powder Springs	LBTD Cobb	Total
Authority Receipts	19,305,793	717,692	1,139,260	296,745	6,223	44,302	6,618	1,487,205	23,003,838
Monthly Contract Payment	(7,239,673)	-	(511,794)	(118,698)	(2,489)	(17,721)	(2,647)	-	(7,893,022)
Collection Fees	(544,104)	-	(31,373)	(8,902)	(187)	(1,329)	(199)	(74,360)	(660,454)
Net Authority Receipts	11,522,016	717,692	596,093	169,145	3,547	25,252	3,772	1,412,845	14,450,362
	88.4%	5.5%	4.6%	1.3%	0.0%	0.2%	0.0%		100.0%
								CT&T Cash Payment	(1,104,036)
								Transfer from GenFund to SinkFund (DS)	(6,582,030)
								Debt Service Reserve Transfer (DSRT)	-
									(7,686,066)
								Annual Excess Tax Payments	6,764,297
Annual Excess Tax Payment	Pro Rata	AETP Payable	<u>Paid From</u>					Authority Share (62.5%)	4,227,686
			<i>HMT</i>	<i>LBTD</i>	<i>Total</i>		County/Cities Share (37.5%)	2,536,611	
Cobb County	88.4%	2,241,752	828,907	1,412,845	2,241,752			6,764,297	
Marietta	5.5%	139,636	139,636		139,636			-	
Smyrna	4.6%	115,977	115,977		115,977				
Acworth	1.3%	32,909	32,909		32,909				
Austell	0.0%	690	690		690				
Kennesaw	0.2%	4,913	4,913		4,913				
Powder Springs	0.0%	734	734		734				
	100.0%	2,536,611	1,123,766	1,412,845	2,536,611				

* Annual Excess Tax Payments - Breakdown

LBTD Portion 1,412,845

HMT Portion 5,351,452

6,764,297

Annual Excess Tax Payment to be calculated and accrued monthly, does not impact R&E Fund.

Annual Excess Tax Payment defined as HMT and LBTD receipts, less DS, DSRF, Monthly Contract Payment, Collection Fees, CT&T cash payments.

Annual Excess Tax Payment distribution percentages based on HMT only, excludes LBTD Cobb.

Annual Excess Tax Payment paid out annually, within 60 days of fiscal year end.

*** HMT applied to DS, DSRF, and CT&T cash payments first, then LBTD applied as needed.**

Document comparison by Workshare Compare on Wednesday, March 1, 2023 9:05:30 AM

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Document 2 ID	1
Description	#685717263v1<ACTIVE> - Amended and Restated Galleria Operating Agreement - City of Powder Springs- 3.1.23 draft
Rendering set	GT-1

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	Deletion
	Moved from
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	Style change
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	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Moved to	0
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Total changes	59