

Village of La Grange



SPECIAL VILLAGE BOARD MEETING

MONDAY, MARCH 2, 2009

7:30 p.m.

Village Hall Auditorium

53 S. La Grange Road

La Grange, IL 60525

Elizabeth M. Asperger
Village President

Robert N. Milne
Village Clerk

VILLAGE OF LA GRANGE
SPECIAL MEETING OF THE
VILLAGE BOARD OF TRUSTEES

Village Hall Auditorium
53 South La Grange Road
La Grange, IL 60525

Monday, March 2, 2009 - 7:30 p.m.

AGENDA

1. Call to Order and Roll Call
2. Resolution – Approving an Intercreditor and Subordinate Agreement Among The Village of La Grange, the First National Bank of La Grange, and the Owner of the La Grange Theatre
3. Ordinance – Authorizing the Purchase of a Façade Preservation Easement in La Grange Theatre Building
4. Resolution – Approving the Use of TIF Funds to Acquire a Façade Preservation Easement and to Pay Projects Costs Related to the Renovation of the La Grange Theatre
5. Adjournment

Individuals with disabilities and who require certain accommodations to participate at this meeting are requested to contact the ADA Coordinator at 708/579-2315 to allow the Village to make reasonable accommodations.

VILLAGE OF LA GRANGE
Administrative Offices

BOARD REPORT

TO: Village President, Village Clerk, and Board of Trustees

FROM: Robert J. Pilipiszyn, Village Manager
Mark E. Burkland, Village Attorney

DATE: March 2, 2009

RE: RESOLUTION — APPROVING AN INTERCREDITOR AND
SUBORDINATION AGREEMENT AMONG THE VILLAGE OF LA
GRANGE, THE FIRST NATIONAL BANK OF LA GRANGE, AND
THE OWNER OF THE LA GRANGE THEATRE

One of the elements of creating the partnership between the Village and the La Grange Theatre for renovation of the Theatre building is to enter into an agreement, called an "Intercreditor and Subordination Agreement," with the First National Bank of La Grange (the "Bank"). The Bank holds a first mortgage lien on the Theatre property. At the time the Intercreditor Agreement will be executed by the Bank and the Village, the Bank will have one mortgage on the Theatre property securing indebtedness in the aggregate principal amount of \$1,400,000. It is necessary for the Village (a) to secure permission from the Bank for the Theatre owner to sell the Façade Preservation Easement in the east façade of the Theatre building to the Village and (b) to establish the priority of security interests among the Bank's mortgage, the Façade Preservation Easement, and the Village's secured interests. The Theatre owner also is a party to the Intercreditor Agreement, because the various secured interests obviously affect the Theatre owner's property.

The Bank has been a willing participant in negotiations with the Village regarding the Intercreditor Agreement. Completing the terms of the agreement have taken time, however, as the terms of the Renovation Agreement between the Village and the Theatre owner were finalized and the detailed provisions of the Intercreditor Agreement have been finalized accordingly.

The key provisions of the Intercreditor Agreement are these:

1. The Bank consents to the Theatre owner's execution of the façade preservation easement and to the recording of the easement with the Cook County Recorder of Deed's.

Resolution—Intercreditor and Subordination Agreement
with First National Bank of La Grange
March 2, 2009 – Page 2

2. The Bank subordinates the lien of the Bank's senior mortgage to the Façade Preservation Easement.
3. The Bank acknowledges the junior lien the Village will file to secure the renovation payment by the Village of \$762,500.
4. The Village acknowledges that any monetary obligations to the Village by the Theater owner that could give rise to a lien in favor of the Village are subordinate to the Bank's senior mortgages and loan documents.
5. The Bank grants the Village the options, if the Theatre owner defaults, to purchase the Bank's senior debt at par (including all outstanding principal and accrued and unpaid interest, fees, and costs) or to cure the Theatre owner's default.

Agreements like the Intercreditor Agreement are common, and most of the provisions of this Intercreditor Agreement are in a common format. The terms related to the Façade Preservation Easement are less common, but the Bank and the Village have amicably established appropriate provisions for how the easement will be treated.

Mark Burkland's partner Frank Keldermans, who handled the drafting work along with the Bank's attorneys, will be present at the Board meeting to answer any questions about the Intercreditor Agreement.

We recommend that the Resolution approving an Intercreditor and Subordination Agreement among the Village, First National Bank of La Grange, and the Theatre owner be approved.

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VILLAGE OF LA GRANGE

RESOLUTION NO. _____

AN RESOLUTION APPROVING
AN INTERCREDITOR AND SUBORDINATION AGREEMENT
AMONG THE VILLAGE, THE FIRST NATIONAL BANK OF LA GRANGE
AND THE OWNER OF THE LA GRANGE THEATRE

WHEREAS, as a part of its partnership with the owner of the La Grange Theatre in the renovation of the La Grange Theatre building, it is necessary and appropriate for the Village of La Grange to reach agreement with the First National Bank of La Grange (the "*Bank*"), which has senior debt on the La Grange Theatre property, regarding the Village's purchase of a façade preservation easement in the east façade of the La Grange Theatre building and the security on funds the Village will be expending on the Theatre renovation project; and

WHEREAS, the Village and the Bank have negotiated terms of an intercreditor and subordination agreement that, among other things, will (a) acknowledge the Bank's senior debt on the Theatre property, (b) include the Bank's consent to the Theatre owner's sale to the Village of the façade preservation easement, and (c) acknowledge the Village's plan to file a junior lien against the Theatre property to secure repayment, under certain circumstances, of the funds being contributed by the Village to the renovation; and

WHEREAS, the President and Board of Trustees of the Village of La Grange have determined that it is necessary and appropriate to enter into an intercreditor and subordination agreement with the Bank and the Theatre owner in substantially the form attached to this Resolution as Exhibit A and in final form satisfactory to the Village President and Village Manager (the "*Intercreditor Agreement*");

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of La Grange, Cook County and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are hereby incorporated into this Ordinance by this reference as findings of the President and Board of Trustees.

Section 2. Approval of Intercreditor and Agreement. The President and Board of Trustees hereby approve the Intercreditor Agreement and authorize and direct the Village President, Village Clerk, and Village Manager

to take the necessary steps to finalize and execute the Intercreditor Agreement on behalf of the Village.

Section 3. Effective Date. This Resolution will be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of March 2009.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of March 2009.

Elizabeth M. Asperger, Village President

ATTEST:

Robert N. Milne, Village Clerk

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This Instrument Prepared By
and After Recording Mail to:

Mark E. Burkland, Esq.
Francis L. Keldermans, Esq.
Holland & Knight LLP
131 South Dearborn, 30th Floor
Chicago, Illinois 60603

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "Agreement") is dated as of _____, 2009 by and among **FIRST NATIONAL BANK OF LA GRANGE**, a national banking association (the "Senior Lender"), **VILLAGE OF LA GRANGE**, an Illinois municipal corporation ("Village"), and **80 SOUTH LAGRANGE, INC.** an Illinois corporation (the "Owner").

WITNESSETH:

A. The Owner has executed and delivered to the Village that certain Agreement Between the Village of La Grange and the Owner For Renovation of the La Grange Theatre, a Façade Preservation Easement, and Theatre Operation Covenants dated as of _____, 2009 (the "Renovation Agreement") with respect to the property commonly known as 80 South La Grange Road, La Grange, Illinois (the "Property"), as more particularly described on Exhibit A attached hereto.

B. Pursuant to the Renovation Agreement, the Village agrees, among other things, to provide certain funds ("Renovation Funds") for the renovation of the Property (the "Renovation"), and the Owner agrees, among other things, to (i) renovate the Property in accordance with plans and specifications approved by the Village Manager and (ii) grant, warrant and convey to the Village a façade preservation easement in the East Façade (as such term is defined in Section 2.A. of the Renovation Agreement) of the Property (the "Façade Preservation Easement").

C. To assist the Owner with the Renovation, the Village will provide the Owner with a renovation loan in the amount of Seven Hundred Sixty Two Thousand Five Hundred and No/100 Dollars (\$762,500.00) (the "Renovation Loan"). The Renovation Loan will be memorialized by a promissory note substantially in the form attached to the Renovation Agreement (together with all extensions, renewals, novations, or modifications thereof, the "Renovation Promissory Note") and secured by a junior mortgage on the Property in favor of the Village, also substantially in the form attached to the Renovation Agreement (as the same may be amended, modified, extended, renewed or restated from time to time, the "Renovation Mortgage"). In addition to the Renovation

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Loan, the Village will purchase from the Owner the Façade Preservation Easement for the amount of \$237,500.00 (the "Façade Preservation Payment").

D. Pursuant to the Renovation Agreement and the Renovation Note, the Owner must (a) repay the Renovation Loan to the Village in full upon the occurrence of certain events (each event is referred to herein as a "Repayment Event"), as more particularly set forth in Section 6A of the Renovation Agreement (the "Renovation Loan Repayment") and/or (b) repurchase the Façade Preservation Easement from the Village for the total actual amount paid by the Village to the Owner for the Façade Preservation Easement (together with the Renovation Loan Repayment, the "Repayment Obligations") upon occurrence of a Repayment Event and certain other events set forth in Section 6B of the Renovation Agreement (together with a Repayment Event, each an "Owner Repayment Default"). The Repayment Obligations and all other indebtedness and obligations of the Owner to the Village under the Renovation Agreement, the Renovation Note, and the Renovation Mortgage are collectively referred to herein as the "Junior Obligations." The Renovation Agreement, the Renovation Note, and the Renovation Mortgage and all other contracts, documents, assignments, certificates and agreements that evidence, secure or in any way relate to the Junior Obligations are hereinafter referred to collectively as the "Village Loan Documents." All sums, payments, accounts or other monetary obligations of the Owner to the Village under the Façade Easement, the Renovation Agreement, and any other agreement between the Village and the Owner in connection with the Renovation that are or may become secured by any lien on the Property or any right of the Village to lien the Property are hereinafter referred to collectively as the "Junior Lien Rights."

E. Subject to the terms and conditions of certain loan documents between Senior Lender and the Owner, Senior Lender has made a loan to the Owner evidenced and secured, among others, by the following documents:

(i) Amended and Restated Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing made by the Owner in favor of Senior Lender dated as of _____, 2009 and recorded on _____, 2009 in the Office of the Cook County Recorder of Deeds as document number _____ (the "Senior Mortgage") which senior mortgage secures a promissory note in the principal amount of \$1,400,000.00 made by the Owner in favor of Senior Lender ("Senior Note"); and

(ii) the Assignment (as defined in Section 10 below)

(hereinafter the Senior Mortgage, the Senior Note, the Assignment, and all extensions, renewals, novations, or modifications thereof, along with all other documents, agreements or certificates that evidence, secure or otherwise relate to the Senior Note are collectively referred to herein as the "Senior Loan Documents"). The loan evidenced and secured by the Senior Loan Documents and all other indebtedness of the Owner to Senior Lender evidenced or secured under the Senior Loan Documents is collectively referred to herein as the "Senior Debt." An event of default under the Village Loan Documents, including, without limitation, an Owner Repayment Default, or the Façade Preservation Easement is an event of default under the Senior Loan Documents.

F. As security for the payment of the Senior Debt and all liabilities and obligations of the Owner under the Senior Loan Documents, the Owner, pursuant to the Senior Mortgage has granted to the Senior Lender a first lien and continuing unconditional security interest in and upon, among other things, the Property (said lien and security interest of the Senior Lender in the Property is referred to herein as the "Senior Lien").

G. The Senior Lender has agreed to consent to the execution and recording of the Façade Preservation Easement against the Property, subject to the terms and conditions hereof.

H. The Village has agreed, among other things, (i) to subordinate the Junior Lien Rights to the Senior Debt and to the Senior Lien with respect to the Property, (ii) to subordinate the lien of the Junior Obligations to the Senior Debt, Senior Lien, the Senior Mortgage, and all of the other Senior Loan Documents with respect to the Property, and (iii) to forebear for the time period set forth herein from enforcing the Repayment Obligations upon any Owner Repayment Default.

I. The Senior Lender has agreed to subordinate, to the extent expressly set forth herein, the lien of the Senior Lien to the rights of the Village under the Façade Preservation Easement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. Consent to Façade Preservation Easement. The Senior Lender hereby consents to the execution of the Façade Preservation Easement by the Owner and the Village and the Senior Lender agrees and consents to the recording of the Façade Preservation Easement in the office of the Cook County, Illinois Recorder of Deeds.

2. Priority of Liens. Without regard to the date, time, manner or order of perfection or attachment of the security interests and liens of the Senior Mortgage and the Village Loan Documents and notwithstanding the usual application of the priority provisions of the Uniform Commercial Code in effect in any jurisdiction or any other applicable law or judicial decision of any jurisdiction, or whether the Village holds possession of all or any part of the Property or any of the other collateral for the Senior Debt, or if the Senior Lender is perfected without filing or possession in any part of the Property or any of the other collateral for the Senior Debt, the Senior Mortgage, and all of the other Senior Loan Documents shall be a first, senior and prior security interest in and lien on the Property and all other collateral for the Senior Debt superior to the Junior Obligations and the Junior Lien Rights. Notwithstanding the foregoing and as otherwise expressly set forth in this Agreement, the Senior Lender hereby subordinates the lien of the Senior Lien to the Façade Preservation Easement.

3. Junior Obligations.

a. The Village hereby subordinates the Village Loan Documents, the Junior Obligations and the Junior Lien Rights to the Senior Debt and all other claims of the Senior Lender under the Senior Mortgage and the Senior Loan Documents.

b. The Village agrees that the priority of the Senior Debt set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Owner under any bankruptcy or insolvency law or laws relating to the relief of debtors of any jurisdiction, whether now or hereafter in effect, and in any out-of-court composition, assignment for the benefit of the Village or other arrangement of any kind.

4. Enforcement Action. Notwithstanding the Village's rights under applicable law or any provision of the Village Loan Documents to the contrary, the Village shall not institute any Enforcement Action against the Owner or any common guarantor of the Senior Debt and the Junior Obligations (the "Common Guarantor") during the 180 day period following notice to the Senior Lender from the Village of an Owner Repayment Default. Without limiting the generality of the foregoing, in the event of a bankruptcy or insolvency of the Owner or any Common Guarantor, the Village shall not object to or oppose any efforts by the Senior Lender to obtain relief from the automatic stay under Section 362 of the United States Bankruptcy Code or to seek to cause such entity's or individual's bankruptcy estate to abandon any of the property or assets of the Owner or any Common Guarantor (or any portion thereof). For purposes hereof, the term "Enforcement Action" shall mean any judicial or administrative proceeding initiated by the Village against the Owner or Common Guarantor to collect the Repayment Obligations, to foreclose the Renovation Mortgage or otherwise enforce the rights of the Village under the Village Loan Documents or applicable law with respect to the Repayment Obligations.

5. Option to Purchase Senior Debt. The Senior Lender hereby grants the Village an option to purchase the Senior Debt and the Senior Loan Documents at par (including outstanding principal and accrued and unpaid interest, fees and costs ("Purchase Option"). Within thirty (30) days of receipt by the Village of written notice from the Senior Lender that a default has occurred and continues under the Senior Loan Documents (the "Option Period"), the Village will notify the Senior Lender of its intention to: (a) exercise the Purchase Option or (b) cure all arrearages then due under the Senior Loan Documents ("Cure") and continue paying to the Senior Lender all scheduled payments and perform other obligations due to The Senior Lender under the Senior Loan Documents for a period of up to ninety (90) days of expiration of the Option Period. The Village is permitted: (i) fifteen (15) business days for monetary defaults and thirty (30) business days for non-monetary defaults after expiration of the Option Period to effectuate the Cure (each, a "Cure Period") or (ii) thirty (30) days from the date of expiration of the Option Period to consummate the Purchase Option, whereupon the Senior Lender shall assign and convey to the Village all of its right, title, and interest in and to the Senior Debt and the Senior Loan Documents to the Village. In the event: (a) the Village does not exercise the Purchase Option, (b) the Village exercises, but does not consummate, the Purchase Option within thirty (30) days after expiration of the Option Period, (c) elects, but fails to

effectuate the Cure within the applicable Cure Period(s), (d) effectuates the Cure, but subsequently defaults on its obligations to the Senior Lender during the ninety (90) day period after the expiration of the Option Period, or (e) fails to cause the repayment of all sums due to the Senior Lender under the Senior Loan Documents within (90) days of expiration of the Option Period, then the Village agrees that the Owner Covenants and Agreements on Use and Status of Theatre set forth in Section 10 of the Renovation Agreement shall automatically terminate and be of no further force or effect, without any consent or action required for such termination by the Owner, the Village, or the Senior Lender, if any of the events specified in (a) through (e) of this sentence occur and the Senior Lender acquires title to the Property through foreclosure, deed-in-lieu, or otherwise. Following such acquisition of title by the Senior Lender, the Senior Lender or subsequent purchasers of the Property shall have the right, but in no event will be obligated to, repurchase the Façade Preservation Easement by payment of the Easement Repurchase Payment (as defined in the Renovation Agreement) to the Village, and, after such payment has been made, the Village will execute any documents reasonably requested in connection with the repurchase, including, without limitation, a release or vacation of the Façade Preservation Easement. Without limiting the generality of any other provision of this Agreement, it is being expressly understood that during the periods described in this Section 5 the Senior Lender shall be entitled to exercise all of its rights and remedies against the Owner during the continuance of a default under the Senior Loan Documents.

6. Defaults. The Senior Lender shall promptly send to the Village a copy of any notice of default sent to the Owner pursuant to the Senior Loan Documents. The Village shall promptly send to the Senior Lender a copy of any notice of default sent to the Owner by the Village or any notice of default sent by the Owner to the Village.

7. Proceeds. The order of priority of liens set forth in Section 2 hereof shall apply to all proceeds of the Property, including, without limitation, any insurance proceeds payable in the event of loss of, or damage to, the Property or any condemnation proceeds.

8. Assignment by Senior Lender. The Village acknowledges and agrees that Senior Lender may assign the Senior Loan Documents to any successors and assignees, and that this Agreement shall be binding upon the Village provided that such successors or assignees expressly assume any obligations, commitments, or duties of the Senior Lender under this Agreement. The Senior Lender agrees to promptly provide to the Village written evidence of any such transfers or assignments.

9. Estoppels. The Village agrees to provide an estoppel letter to any such successor or assignee within ten (10) days after a written request therefore from the Senior Lender, stating that (a) (except as disclosed therein) the Village Loan Documents are in full force and effect and have not been amended or modified, (b) neither the Village nor, to the best of the Village's knowledge, the Owner (only with respect to obligations owing by the Owner to the Village), is in default thereunder and (c) the Village has not given to, or received from, the Owner a notice of default under the Village Loan Documents. The Senior Lender agrees to provide an estoppel letter to the Village within ten (10) days after a written request therefore from the Village, stating that (a) (except as

disclosed therein) the Senior Loan Documents are in full force and effect and have not been amended or modified, (b) neither the Senior Lender nor, to the best of the Senior Lender's knowledge, the Owner (only with respect to obligations owing by the Owner to the Senior Lender), is in default thereunder and (c) the Senior Lender has not given to, or received from, the Owner a notice of default under the Senior Loan Documents.

10. Collateral Assignment by Owner. The Village hereby consents to the collateral assignment by the Owner to the Senior Lender of all of the Owner's right, title and interest under the Renovation Agreement pursuant to that certain Assignment of Project Documents (as the same may be amended from time to time, the "Assignment"), dated the same date as this Agreement, executed and delivered by the Owner to the Senior Lender, as security for the Owner's obligations to the Senior Lender under the Senior Loan Documents.

11. Bankruptcy. If the Renovation Agreement is terminated as a result of rejection in any bankruptcy, reorganization or insolvency proceeding, then the Village shall, upon written request by the Senior Lender, given within thirty (30) days after such termination, enter into a replacement renovation agreement with the Senior Lender, which replacement agreement shall contain the same terms and conditions set forth in the Renovation Agreement.

12. Representations and Warranties.

(a) The Village covenants, agrees, certifies, represents and warrants to the Senior Lender as follows:

(i) True, correct and complete copies of the Village Loan Documents listed on Exhibit B attached hereto have been delivered to the Senior Lender, and the same have not been canceled, modified, assigned, extended or amended, except as indicated on Exhibit B. There are no side letters or oral or other agreements which affect any terms of the Village Loan Documents or the relationship between the Owner and the Village. The Village has received no notice of prior sale, transfer or assignment, hypothecation or pledge the Owner's interest in the Renovation Agreement, except as otherwise set forth herein.

(ii) Neither the Village, nor to the best knowledge of the Village, the Owner, is in default under the Village Loan Documents, and the Village and the Owner have fully performed all of the obligations to be performed. The Village is not owed any amounts which are past due under the Village Loan Documents as of the date hereof. The Village has not given the Owner notice of a default by the Owner, and the Village has not received notice claiming that it is in default under the Village Loan Documents. The Village does not currently have any offset, claim or other charge against the Project (as defined in the Village Loan Documents).

(iv) The Village has not sold, transferred or assigned the Village Loan Documents or otherwise incurred or granted a lien or encumbrance on its interest in the Village Loan Documents.

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(v) None of the following events have occurred: (1) the filing of a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee, by or against the Village, or (2) the making of an assignment by the Village for the benefit of its creditors.

(vi) There is no litigation or proceeding pending or threatened against or affecting the Village which would materially adversely affect the Village Loan Documents, the projects described therein, or the ability of the Village to perform any of its obligations under the Village Loan Documents.

(b) The Senior Lender covenants, agrees, certifies, represents and warrants to the Village as follows:

(i) True, correct and complete copies of the Senior Loan Documents listed on Exhibit C attached hereto have been delivered to the Village, and the same have not been canceled, modified, assigned, extended or amended, except as indicated on Exhibit C. There are no side letters or oral or other agreements which affect any terms of the Senior Loan Documents or the relationship between the Owner and the Senior Lender. The Senior Lender has received no notice of prior sale, transfer or assignment, hypothecation or pledge of the Owner's interest in the Renovation Agreement, except as otherwise set forth herein.

(ii) Neither the Senior Lender, nor to the best knowledge of the Senior Lender, the Owner, is in default under the Senior Loan Documents, and the Senior Lender and the Owner have fully performed all of the obligations to be performed. The Senior Lender is not owed any amounts which are past due under the Senior Loan Documents as of the date hereof. The Senior Lender has not given the Owner notice of a default by the Owner, and the Senior Lender has not received notice claiming that it is in default under the Senior Loan Documents. The Senior Lender does not currently have any offset, claim or other charge against the Property.

(iv) The Senior Lender has not sold, transferred or assigned the Senior Loan Documents or otherwise incurred or granted a lien or encumbrance on its interest in the Senior Loan Documents.

(v) None of the following events have occurred: (1) the filing of a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee, by or against the Senior Lender, or (2) the making of an assignment by the Senior Lender for the benefit of its creditors.

(vi) There is no litigation or proceeding pending or threatened against or affecting the Senior Lender which would materially adversely affect the Senior Loan Documents, the Property, or the ability of the Senior Lender to perform any of its obligations under the Senior Loan Documents.

13. Limitation of Senior Lender's Liability. The Village acknowledges and agrees that the Senior Lender shall not be liable for any act or omission of the Owner, including under any indemnity provided for in the Renovation Agreement, it being

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understood that any such liability of the Senior Lender shall in all cases be limited to actions taken or omitted by the Senior Lender on or after the date the Senior Lender: (a) acquires legal title to the Property ("Transfer Event") or (b) enters into a replacement agreement with the Village pursuant to Section 11 hereof ("Replacement Event"). The Village further acknowledges and agrees that neither this Agreement nor anything to the contrary contained in the Village Loan Documents, shall, prior to either a Transfer Event or a Replacement Event, except as set forth in any applicable Village regulation or code, (a) operate to, give rise to, or create, any responsibility or liability upon the Senior Lender for the control, care, management or repair of the Property or for any waste committed on the Property by any party whatsoever, or for any dangerous or defective condition of the Property or (b) for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to the Village or any licensee, invitee, guest, employee, agent or stranger.

14. Attornment. Notwithstanding any counterclaim, right of set-off, defense or claim the Village may have against the Owner, or any contrary instruction, direction or request from the Owner, the Village agrees, that, on or after a Transfer Event, a Replacement Event, or if the Senior Lender exercises its rights under the Senior Loan Documents so as to succeed to the interest of the Owner, to perform under the same terms and conditions of the Renovation Agreement; provided that the Senior Lender performs all of the obligations of the Owner under the Renovation Agreement which are conditions precedent to the performance of the Village's obligations under the Renovation Agreement.

15. Termination by the Village. The Village agrees that it will not terminate the Renovation Agreement or cease to perform thereunder for any reason, including the failure of the Owner to make any payments due to the Village, without first giving prior written notice to the Senior Lender of such intention to terminate or cease performing and the opportunity for the Senior Lender to cure such breach within (i) ten (10) business days thereafter with respect to monetary defaults and (ii) thirty (30) days thereafter with respect to non-monetary defaults, except that the Village agrees that no default shall be deemed to have occurred if such default is a non-monetary default and such default by its nature cannot be cured within such thirty (30) day period so long as the Senior Lender shall have commenced curing the same within such thirty (30) day period and thereafter shall diligently and continuously prosecute the same to completion within a reasonable time thereafter. If such non-monetary default can only be cured by persons in actual possession of the Property, then the Senior Lender shall have the right, but not the obligation, to cure such non-monetary default within thirty (30) days after the date the Senior Lender takes possession of the Property through a receiver, mortgagee in possession, or otherwise or if such default by its nature cannot be cured within such thirty (30) day period so long as the Senior Lender shall have commenced curing the same within such thirty (30) day period and thereafter shall diligently and continuously prosecute the same to completion within a reasonable time thereafter. In any such event, the Senior Lender shall diligently seek possession of the Property to cure such non-monetary default. Notwithstanding the foregoing, from and after a Transfer Event or a Replacement Event, all notice and cure provisions for the benefit of the Senior Lender shall be such notice and cure provisions available to the Owner as are set forth in the Renovation Agreement. Each party hereto agrees to reasonably cooperate with the other party to carry out and

accomplish the acts contemplated herein.

16. Immediate Effect. This Agreement shall be effective immediately upon its execution by each of the parties hereto, and there are no conditions precedent or subsequent to the effectiveness of this Agreement.

17. Successors and Assigns; Continuing Effect, Etc. This Agreement is being entered into for the benefit of, and shall be binding upon, each of the Senior Lender, the Village, the Owner, and their respective permitted successors, assigns, heirs and personal representatives, as applicable. The Senior Lender may participate out to other parties any portion of its interest under the Senior Debt and no such participant shall be required to become a signatory hereto. Any assignee or transferee shall execute and deliver to the other parties hereto an agreement pursuant to which they become parties hereto as fully as if they were signatories hereto and providing for the effectiveness of this Agreement as to such transferee or assignee and other parties, and the lien and debt priority of such party shall be that of such party's assignor and transferor. This Agreement shall be a continuing agreement, shall be irrevocable and shall remain in full force and effect so long as any of the Senior Debt is outstanding.

18. Notification of Default. The Senior Lender and the Village shall give written notice to the other of a default by the Owner under Senior Debt or a breach or default by the Owner under the Junior Obligations, respectively. Nothing in this Agreement shall be interpreted to limit or restrict the right of the Senior Lender and the Village to waive any default under their respective documents, and the Senior Lender, and the Village agrees that any waiver will be in writing and to provide the other parties hereto with a copy of any such waiver.

19. Notices. Except as otherwise provided herein, all notices, requests and demands to or upon a party hereto to be effective shall be in writing and shall be sent by certified or registered mail, return receipt requested, personal delivery against receipt, delivery service against receipt, overnight courier service against receipt, or by telegraph or telex and, unless otherwise expressly provided herein, shall be deemed to have been validly serviced, given or delivered when delivered against receipt, or one (1) business day after deposit in the mail, postage prepaid, or, in the case of telegraphic notice, when delivered to the telegraph company, or, in case of telecopier notice, when sent, addressed as follows:

If to the Senior Lender: First National Bank of La Grange
620 West Burlington Avenue
La Grange, Illinois 60525
Attn: Daniel B. Hennebry

With a copy to: Fox, Hefter, Swibel, Levin & Carroll, LLP
200 West Madison Street, Suite 3000
Chicago, Illinois 60606
Attn: Laurie A. Levin
Phone: 312.224.1207

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If to the Village: Village of La Grange
53 South La Grange Road
P.O. Box 668
La Grange, Illinois 60525
Attn: Village Manager
Phone: 708.579.2318

With copy to: Holland & Knight LLP
131 South Dearborn, 30th Floor
Chicago, Illinois 60603
Attn: Mark E. Burkland
Phone: 708.578.6557

If to the Owner : 80 South LaGrange, Inc.
80 South La Grange Road
La Grange, Illinois 60525
Attn: John G. Rot

With a copy to: Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677
Attn: Edward J. Hannon
Phone: 312.360.6754

The parties hereto may designate such other address or telecopier number by written notice in the aforesaid manner.

20. Amendments; Modifications. This Agreement may not be modified, altered or amended except by an agreement in writing executed by all of the parties hereto.

21. Amendment. The Village and the Owner agree to forbear from (a) modifying, altering or amending any payment amount or payment term of the Village Loan Documents; (b) otherwise modify, alter or amend the Village Loan Documents in a manner that would increase or make more burdensome the Owner's obligations thereunder or adversely affect Senior Lender's rights under this Agreement; or (c) modify, alter or amend the Façade Preservation Easement without the prior written consent of the Senior Lender, which consent shall not unreasonably be withheld or delayed.

22. Approval of Plans and Specifications. Whenever under the terms of the Village Loan Documents or the Façade Preservation Easement the Village's approval is required for plans and specification in connection with the work proposed to be performed by the Owner with respect to the Project, the Village shall not grant its approval if the proposed work will materially and adversely affect the value or marketability of the Project.

23. Continued Effectiveness of this Agreement. The terms of this Agreement, the subordination effected hereby, and the rights and the obligations of the

2.14

Village and the Senior Lender arising hereunder, shall not be affected, modified or impaired in any manner or to any extent by (a) any amendment or modification of or supplement to the Senior Loan Documents or any of the Village Loan Documents, and the Village hereby irrevocably consents to and waives any claim it may have as a result of any such amendment, modification or supplement of the Senior Loan Documents or the Village Loan Documents; (b) the validity or enforceability of any of such documents; or (c) any exercise or non-exercise of any right, power or remedy under or in respect of the Senior Debt or the Junior Obligations or any of the instruments or documents referred to in clause (a) above.

24. Conflict. In the event of any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of any of the Village Loan Documents, the Façade Preservation Easement, or the Senior Loan Documents, the provisions of this Agreement shall control and govern.

25. Cost and Expenses of Enforcement. The defaulting party agrees to pay all reasonable costs, legal expenses and attorneys' and paralegals' fees of every kind, paid or incurred by the non-defaulting party in enforcing its rights hereunder, including, but not limited to, litigation instituted in a State or Federal Court, as hereinafter provided (including proceedings under the United States Bankruptcy Code) enforcing obligations of the defaulting party under this Agreement.

26. FORUM; AGENT; VENUE; JURY TRIAL WAIVER. TO INDUCE THE SENIOR LENDER TO ACCEPT THIS AGREEMENT, EACH OF THE OWNER AND THE VILLAGE IRREVOCABLY AGREES THAT, ALL ACTIONS OR PROCEEDING IS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN COOK COUNTY, ILLINOIS. EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE SENIOR LENDER AND ANY OTHER PARTY HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH IT IS A PARTY.

27. Governing Law. This Agreement shall be governed and controlled by the laws of the State of Illinois without regard to principles of conflict of laws.

28. Severability. In the event any one or more of the provisions contained herein shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

29. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed one original and all of which taken together shall constitute one and the same instrument.

2.15

30. Definitions. All capitalized terms used in this Agreement which are not specifically defined herein shall have the meaning set forth in the Senior Loan Documents.

31. Patriot Act. The Owner represents and warrants to Senior Lender and the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of any such person or entity. The Owner further represents and warrants to Senior Lender and the Village that the Owner and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, nor facilitating, the transactions contemplated by this agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

32. Owner's Acknowledgment. The Owner hereby consents to this Agreement and agrees to abide by the terms hereof.

IN WITNESS WHEREOF the parties hereto have executed this Intercreditor and Subordination Agreement the day and year first above written.

VILLAGE:

VILLAGE OF LA GRANGE
An Illinois municipal corporation

By: _____
Village President

Attest: _____
Village Clerk

SENIOR LENDER:

FIRST NATIONAL BANK OF
LAGRANGE
A national banking association

By: _____

Name: _____

Title: _____

OWNER:

80 SOUTH LA GRANGE, INC.
an Illinois corporation

By: _____

Name: _____

Title: _____

2.16

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On _____, 2009 before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Elizabeth Asperger, the Village President and Robert N. Milne, the Village Clerk, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within Agreement as Village President and Village Clerk of the Village of La Grange and they acknowledged to me that the execution thereof was their free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)

Illinois

Notary Public in and for the State of

My commission expires:

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On _____, 2009 before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the _____ of First National Bank of La Grange and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for the State of

My commission expires:

2-17

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On _____, 2009 before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the _____ of the Owner and acknowledged to me that the execution thereof was his free and voluntary act and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)

Illinois

Notary Public in and for the State of

My commission expires:

2.18

EXHIBIT A

LEGAL DESCRIPTION

LOTS 9 AND 10 IN BLOCK 22 IN LAGRANGE IN THE EAST 1/2 OF THE
NORTHWEST 1/4 (SOUTH OF THE CHICAGO BURLINGTON AND QUINCY
RAILROAD) OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly know as: 80-88 South La Grange Road
LaGrange, Illinois 60525

Permanent Index No.: 18-04-129-020-0000

2.19

EXHIBIT B

VILLAGE LOAN DOCUMENTS

2.20

EXHIBIT C

SENIOR LENDER LOAN DOCUMENTS

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2.21

VILLAGE OF LA GRANGE
Administrative Offices

BOARD REPORT

TO: Village President, Village Clerk, and Board of Trustees

FROM: Robert J. Pilipiszyn, Village Manager

DATE: March 2, 2009

RE: ORDINANCE – AUTHORIZING THE PURCHASE OF A FAÇADE PRESERVATION EASEMENT IN THE LA GRANGE THEATRE BUILDING

The Village Board approved the Renovation Agreement between the Village and the La Grange Theatre at its regular meeting on November 10, 2008. The Renovation Agreement provides that the Village will purchase a façade preservation easement in the east façade of the theatre building. Originally the purchase price was set in the amount of \$1,00,000, being the total amount of the contribution the Village is making to the renovation project.

Shortly thereafter the theatre owner determined, and the Village confirmed, that the sale of the façade preservation easement to the Village would result in (unintended) tax consequences for the theater owner (and thus a loss of capital towards the overall renovation project). The Village Board was aware of this possibility when it approved the Renovation Agreement. The renovation agreement was restructured, essentially bifurcated, whereby the Village would purchase the façade preservation easement at its fair market value, with the remaining funds being deposited into the renovation account with conditions subsequent and secured by a mortgage on the theater property. The theatre owner had the easement appraised by an independent MAI-certified appraiser, and its fair market value has been set at \$237,500. The Renovation Agreement has been revised accordingly.

As the next step in the acquisition process, it is now appropriate for the Village Board to adopt an ordinance officially authorizing the purchase of the façade preservation easement in the established amount of \$237,500. The Village Attorney has prepared the appropriate ordinance.

We recommend that the ordinance be approved to authorize purchase of the façade preservation easement at the price of \$237,500.

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3.1

VILLAGE OF LA GRANGE

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING PURCHASE
OF A FAÇADE PRESERVATION EASEMENT
IN THE LA GRANGE THEATRE BUILDING

WHEREAS, pursuant to Section 74.4(c) of the Illinois TIF Act, 65 ILCS 5/11-74.4-1 *et seq.*, and other applicable authority, and in accordance with the agreement titled "An Agreement Between the Village of La Grange and 80 South La Grange, Inc. for Renovation of the La Grange Theatre, A Façade Preservation Easement, and Theatre Operation Covenants" (the "*Theatre Renovation Agreement*"), approved by the President and Board of Trustees on November 10, 2008, the Village desires to purchase a preservation easement in the east façade of the La Grange Theatre as described and depicted in the Theater Renovation Agreement (the "*Façade Preservation Easement*");

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of La Grange, Cook County and State of Illinois, as follows:

Section 1. Recital. The foregoing recital is hereby incorporated into this Ordinance by this reference as a finding of the President and Board of Trustees.

Section 2. Approval of Façade Preservation Easement Purchase. The President and Board of Trustees hereby authorize purchase of the Façade Preservation Easement and authorize and direct the Village President and Village Clerk to take all steps necessary and appropriate to complete the acquisition in accordance with the terms of the Theatre Renovation Agreement for the price of \$237,500.

Section 3. Effective Date. This Ordinance will be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of March 2009.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of March 2009.

Elizabeth M. Asperger, Village President

ATTEST:

Robert N. Milne, Village Clerk

3.2

LA GRANGE THEATRE
EAST FAÇADE PRESERVATION EASEMENT

This Façade Preservation Easement (this "Grant of Easement") is made on the _____ day of _____ 2009 by 80 South La Grange, Inc., an Illinois corporation (the "Grantor") to the Village of La Grange, an Illinois municipal corporation (the "Grantee").

I. Recitals

A. The Grantor is an Illinois corporation and is the owner of the property and improvements commonly known as 80 South La Grange Road, La Grange, Illinois 60515 (the "Theatre Property"). The Theatre Property is legally described in Exhibit A attached to this Easement and is improved with the building known as the La Grange Theatre Building (the "Theatre").

B. The Theatre is one of architectural significance, containing features depicted in Exhibit B attached to this Grant of Easement. Further, the Theatre is located prominently in downtown La Grange and is closely associated with the downtown La Grange business community. In particular, the East Façade of the Theatre is a widely recognized feature of downtown La Grange.

C. The Grantor is undertaking a renovation of the Theatre, including among other work extensive interior reconstruction and restoration of features of the East Façade (the "Renovation"). The Grantor desires to preserve certain portions and features of the East Façade of the Theatre in their renovated state after the Renovation.

D. The grant of the easement as set forth in this Grant of Easement will assist in preserving a historical feature of downtown La Grange for the benefit and enjoyment of the residents of La Grange and the general public.

E. The Grantor desires to grant to the Grantee, and the Grantee desires to accept, an architectural façade preservation easement on the East Façade of the Theatre, exclusively for preservation purposes.

F. The term "East Façade" as used in this Grant of Easement means all exterior surfaces and improvements on the entire east front of the Theatre, including the walls, windows, doors, marquees, and all other features of that east front. A description, copies of photographs of the East Façade, and plans for renovation of the East Façade are on file at the offices of the Grantee. It is the intent of the parties that the East Façade remain essentially unchanged after it is renovated as part of the Renovation. See Part III, Section H of this Grant of Easement.

II. Grant of Easement

In consideration of the provisions of this Grant of Easement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Grantor, the Grantor does hereby grant, give, convey, bargain, and sell to the Grantee an easement in gross, in perpetuity, in, on, and to the East Façade, for the purpose of preserving the East Façade and with the rights and terms set forth in this Grant of Easement.

III. Rights and Responsibilities

A. Without the express written consent of the Grantee, which will not be unreasonably delayed, conditioned, or withheld if the proposed activity is consistent with the purposes of this Grant of Easement, the Grantor will not undertake, and will not permit to be undertaken, any of the following:

1. Any demolition, partial demolition, destruction, dismantling, alteration, construction, remodeling, or painting of the East Façade.
2. Any placement or maintenance on the East Façade of any markers or signs, or of any other item that would in any material way alter or change the appearance of the East Façade.
3. The construction, erection, expansion, or placement of any improvement or item on the Theatre that would in any material way alter or change the appearance or visibility of the East Façade.
4. The alteration of the Theatre Property that would in any material way alter or change the appearance or visibility of the East Façade.

In addition, the Grantor will not sell or transfer any interest in the Theatre without first giving written notice to the Grantee of such sale or transfer and written notice of, and a copy of, this Grant of Easement to the buyer or transferee.

B. The Grantor and the Grantee acknowledge the Grantor's desire to undertake, after the completion of the Renovation, a more-substantial restoration of the East Façade to provide for its long-term integrity and to restore some of its historical features (the "*Future Restoration*"). The Grantor may not commence the Future Restoration except with approval of the Grantee and in compliance with the following procedure:

1. The Grantor must prepare and submit to the Grantee's Director of Community Development (the "*Director*") final plans and specifications for the Future Restoration. These Future Restoration plans must include, without limitation (a) a detailed description of all items of work to be completed, (b) the order in which the work will be completed, and (c) the specific materials and techniques to be used in the work. The Grantor will provide a copy to the First National Bank of La Grange (the "*Bank*") of all materials submitted to the Director for its review.
2. Within 30 days after receipt by the Grantee of the Future Restoration plans from the Grantor, the Grantee either will approve or will withhold approval of the plans as submitted. The Grantee will not unreasonably withhold or delay its approval of plans that contain sufficient detail and that provide for the Future Restoration in accordance with recognized principles of conservation and historical preservation. If the Grantee withholds its approval, then the Grantee will advise the Grantor in writing about the reasons for that withholding. The Grantor must revise the plans as provided by the Grantee. The Grantee will approve the plans after they have been properly revised (the "*Final Future Restoration Plans*").
3. All proposed amendments and adjustments to the approved Final Future Restoration Plans must be submitted to, and approved by, the Grantee in accordance with Paragraph 3.B.2 of this Grant of Easement; except that the Director may approve

minor changes to the work that do not alter the Final Future Restoration Plans in any significant way or violate any principles of conservation or historical preservation.

C. If the Grantor requests approval by the Grantee of remodeling, renovation, cleaning, refinishing, construction of improvements, or repair to the Theatre other than the Future Restoration Plans that would be architecturally, aesthetically, and historically consistent with the East Façade, then the approval of the Grantee will not be unreasonably withheld.

D. With any request for approval of a matter relating to the East Façade, the Grantor will furnish the Grantee with all plans, specifications, materials samples, and documents related to the request.

E. If the East Façade suffers damage due to fire, storm, or other casualty, then the Grantor may make no repairs or reconstruction of any type to the East Façade, other than temporary emergency work to prevent further damage to the East Façade and to protect public safety, without the prior written approval of the work by the Grantee, which approval will not be unreasonably delayed or denied.

F. The Grantor will clean the East Façade periodically and (1) will maintain the East Façade in good structural and surface repair and condition at all times and (2) will maintain the Theatre in good structural repair at all times to a degree that the East Façade is not adversely affected by the condition of the Theatre as a whole.

G. The Grantor agrees that any rehabilitation work or new construction work on the East Façade must comply with the requirements of all applicable federal, State of Illinois, and local laws and regulations and must not be inconsistent with the historical or architectural character of the East Façade.

H. Within 60 days after completion of the Renovation and issuance by the Grantee of a certificate of occupancy for the renovated Theatre, and subject to review and approval by the Village and the Bank, the Grantor will execute an amendment to this Grant of Easement (the "Amendment") stating that the Renovation is complete and including (1) a detailed written statement describing the features of the renovated East Façade and (2) photographs of the renovated East Façade. The renovated East Façade as depicted in the Amendment will be the "Approved Façade," and in case of any ambiguity or question regarding the state of the East Façade that is being preserved by this Grant of Easement, the Approved Façade as defined by the materials in the Amendment will control. The Amendment will be recorded with the Cook County Recorder of Deeds.

I. The Grantor must maintain or cause to be maintained replacement cost insurance on the Theatre against loss from the perils commonly insured under standard fire and extended coverage policies. The Grantor also must maintain or cause to be maintained comprehensive liability insurance against claims for personal injury, death, and property damage in at least such amounts as would normally be carried on a property such as the Theatre. The policy or policies must name the Grantee as an additional insured and must provide liability coverage in an amount not less than \$2,000,000. Each policy or certificate must provide for reasonable prior written notice of cancellation by the insurer to the Grantee. The handling of insurance claims and insurance proceeds and condemnation claims and condemnation proceeds are subject to the provisions of the senior mortgage against the Theater Property.

IV. Rights in Grantee Related to Enforcement

The Grantee, to ensure the effective enforcement of this Grant of Easement, has, and the Grantor hereby grants to the Grantee, the following rights:

1. To enter into and upon, and inspect, the Theatre Property, the Theatre, and the East Façade with reasonable frequency, at reasonable times, and with reasonable prior notice.
2. To place a marker on the East Façade providing historical information and/or indicating the Grantee's ownership of an easement, and to keep that marker clean and visible from the street.
3. In the event of a violation of this Grant of Easement, and written notice by the Grantee to the Grantor and the Bank specifying the violation, and the failure of the Grantee or the Bank to cure the violation within 30 days or if the violation is not reasonably curable within a 30-day period the failure of the Grantee or the Bank to promptly commence a cure and diligently pursue the cure to completion:
 - (a) to institute legal proceedings to enjoin that violation by temporary and/or permanent injunction;
 - (b) to require the restoration of the Theatre, the East Façade, or other improvements on the Theatre Property to its prior condition;
 - (c) to collect damages and to avail itself of all other legal and equitable remedies; and
 - (d) to enter upon the Theatre Property and improvements thereon, to correct such violation, and to hold Grantor responsible for the costs of the correction.
4. To be reimbursed by the Grantor for all reasonable costs and attorneys fees incurred by the Grantee as a result of a violation of this Grant of Easement and failure of the Grantee or the Bank to cure the violation within 30 days after written notice by the Grantee to the Grantor and the Bank or if the violation is not reasonably curable within a 30-day period the failure of the Grantee or the Bank to promptly commence a cure and diligently pursue the cure to completion.
5. To defend the validity and/or the enforceability of this Grant of Easement in any action brought by or on behalf of the Grantor or the Grantor's successors in interest and, if the Grantee should prevail in its defense or if the action is otherwise resolved such that the easement remains valid, to be reimbursed by the Grantor or the Grantor's successors in interest for all costs and attorneys fees in connection with the action.
6. To place a lien (an "*Enforcement Lien*") against the Theatre Property—15 days after notice to the Grantor and the Bank of the Grantee's intent to place the lien—to secure payment of any monetary obligations of the Grantor to the Grantee arising from the provisions of this Grant of Easement, except that any such Enforcement Lien securing the Grantee will be junior to the lien of any existing or future mortgagee or holder of a deed of trust on the Theatre Property.

V. General Provisions

A. This Grant of Easement and the obligations it imposes on the Grantor are binding not only on the Grantor but also on Grantor’s successors, heirs, and assigns and all other successors in interest to the Grantor, and will continue as a servitude running in perpetuity with the land. The Grantor and Grantee understand that the Grantor (and any other person bound by the Grantor’s obligations) will have no liability under this Grant of Easement with respect to actions or omissions that occur after the Grantor (or such other person) no longer has any legal or beneficial interest in the Theatre Property. This Grant of Easement will survive any termination of the Grantor’s existence. The rights of the Grantee under this instrument run for the benefit of, and may be exercised by, the Grantee’s successors and assigns, or by the Grantee’s designees duly authorized by the Grantee. In any legal proceeding involving the enforcement or validity of this Grant of Easement, the Grantor consents to the jurisdiction of the courts of the State of Illinois and waives all rights to a jury trial.

B. The Grantee, with the written consent of the Grantor and the Bank, neither of which may be unreasonably delayed or withheld, may transfer, assign, or otherwise convey its rights under this Grant of Easement to any agency of the State of Illinois or to a not-for-profit corporation or trust whose primary purposes include the preservation of buildings of historical, architectural, or cultural significance. The Grantor must deliver its consent or denial of consent, including a statement of reasons for the denial, to the Grantee within 30 days after receipt of the Grantee’s written request for that consent. If the Grantor fails to deliver its consent or denial of consent with that seven-day period, then consent will be deemed to have been given by the Grantee. Any such transfer by the Grantee must be made subject to the terms of the agreement between the Grantee and the Grantor titled “An Agreement Between The Village Of La Grange And 80 South La Grange, Inc. For The Renovation Of The La Grange Theatre, A Façade Preservation Easement, And Theatre Operation Covenants.”

C. Nothing in this Grant of Easement may be construed to limit the Grantee’s right to give its consent to requests of the Grantor or limit the Grantee’s right to abandon some or all of its rights under this Grant of Easement.

D. A copy of each notice given by the Grantor or the Grantee under this Grant of Easement must be provided simultaneously to the Bank.

E. This Grant of Easement may not be amended or modified without the express written agreement of the Grantor, the Grantee, and the Bank.

F. This Grant of Easement will be recorded by the Grantee with the Cook County Recorder of Deeds.

IN WITNESS WHEREOF, the Grantor has executed this Grant of Easement on the date first written above.

80 South La Grange, Inc.

By: _____, President

Accepted:

Village of La Grange

3.1

By: _____, Village President

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3.8

**EXHIBIT A
TO LA GRANGE THEATRE
EAST FAÇADE PRESERVATION EASEMENT**

Legal Description of Theatre Property

LOTS 9 AND 10 IN BLOCK 22 IN LA GRANGE IN THE EAST ½ OF THE NORTHWEST ¼
(SOUTH OF THE CHICAGO BURLINGTON AND QUINCY RAILROAD) OF SECTION 4,
TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

3.10

**EXHIBIT B
TO LA GRANGE THEATRE
EAST FAÇADE PRESERVATION EASEMENT**

Depiction of Features of East Façade of Theatre

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VILLAGE OF LA GRANGE
Administrative Offices

BOARD REPORT

TO: Village President, Village Clerk, and Board of Trustees

FROM: Robert J. Pilipiszyn, Village Manager
Mark E. Burkland, Village Attorney

DATE: March 2, 2009

RE: RESOLUTION — APPROVING THE USE OF TIF FUNDS TO ACQUIRE A FAÇADE PRESERVATION EASEMENT AND TO PAY PROJECTS COSTS RELATED TO THE RENOVATION OF THE LA GRANGE THEATRE

As part of the Village Board's approval of the Renovation Agreement between the Village and the La Grange Theatre at its regular meeting on November 10, 2008, the Village committed to contribute \$1,000,000 of TIF funds toward the theatre renovation project. The structure of the Village's contribution is as follows: The Village will purchase a preservation easement in the east façade of the theatre building for \$237,500, which is the fair market value of the easement as determined by an independent appraiser hired by the theatre owner. The remaining amount of the \$1,000,000—\$762,500—will be contributed by the Village directly toward the costs of the theatre renovation.

The first expenditure of TIF funds will occur within a few weeks, when the Village closes on the purchase of the façade renovation easement. The purchase price of \$237,500 will be deposited into the renovation fund along with an initial deposit of \$250,000 by the theatre owner. The theatre owner will follow up with additional installment deposits of \$150,000 by April 1 and another \$150,000 by May 1. The deposit of the Village's remaining contribution of \$762,500 will occur immediately after the theatre owner has made the last installment deposit of its required contribution of \$650,000 to the renovation fund., which is required no later than June 1.

To implement the Village's commitment of TIF Funds, it is appropriate to adopt the attached resolution to memorialize the use of TIF funds for the façade preservation easement purchase and theatre renovation costs in the amount of \$1,000,000 and to direct the Village President, Village Manager, and Village Finance Director to take the necessary and appropriate steps to implement the terms of the Renovation Agreement.

VILLAGE OF LA GRANGE

RESOLUTION NO. _____

A RESOLUTION APPROVING USE OF FUNDS
FROM THE VILLAGE'S SPECIAL TAX ALLOCATION FUND
TO ACQUIRE A FAÇADE PRESERVATION EASEMENT
AND TO PAY REDEVELOPMENT PROJECT COSTS
RELATED TO RENOVATION OF THE LA GRANGE THEATRE

WHEREAS, to stimulate and induce redevelopment under the Illinois TIF Act, 65 ILCS 5/11-74.4-1 *et seq.*, the Village of La Grange created the Downtown La Grange TIF District (the "*TIF District*"); and

WHEREAS, consistent with the requirements of the TIF Act, funds generated by tax increment allocation financing within the TIF District have been maintained in the Village's special tax allocation fund ("*TIF Funds*"); and

WHEREAS, TIF Funds may be used to pay redevelopment project costs and obligations incurred in the payment thereof, which redevelopment project costs are defined in Subsection 3(q) of the TIF Act as the total reasonable or necessary costs incurred or estimated to be incurred, and incidental to a redevelopment plan, and may include the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings, fixtures, and improvements; and

WHEREAS, pursuant to Subsection 4.4(e) of the TIF Act, the Village is authorized to renovate or rehabilitate any structure or building within the TIF District; and

WHEREAS, the Redevelopment Plan and Project for the TIF District, established by the Village by Ordinance No. O-86-21 adopted May 27, 1986, titled "An Ordinance Adopting And Approving A Tax Increment Financing Redevelopment Plan And Redevelopment Project For The Village Of La Grange" (the "*Redevelopment Plan*"), identifies general goals and objectives for the TIF District and specific objectives for individual blocks located within the TIF District, including as a specific objective in Block 129 the "rehabilitation of commercial properties along La Grange Road"; and

WHEREAS, the La Grange Theatre (the "*Theatre*"), which is located prominently in Downtown La Grange on La Grange Road and within Block 129, is closely associated with the La Grange community and has historical and architectural significance; and

WHEREAS, the Theatre needs to be renovated to assure its long-term structural soundness and economic and market viability, including among other things extensive interior restoration and reconstruction, but it is not economically

feasible for the owner of the Theatre (the "*Theatre Owner*") to renovate the Theatre to an appropriate extent except with the assistance of the Village; and

WHEREAS, the Village has determined that partnering with the Theatre Owner to renovate the Theatre furthers the Redevelopment Plan; and

WHEREAS, on November 10, 2008, pursuant to the TIF Act and in furtherance of the Redevelopment Plan, the President and Board of Trustees of the Village of La Grange approved an agreement with the Theatre Owner now titled "An Agreement Between the Village of La Grange and 80 South La Grange, Inc. for Renovation of the La Grange Theatre, A Façade Preservation Easement, and Theatre Operation Covenants" (the "*Theatre Renovation Agreement*"), which Theatre Renovation Agreement provides that the Village and the Owner will undertake a renovation of the Theatre (the "*Renovation*"); and

WHEREAS, by approving the Theatre Renovation Agreement, the President and Board of Trustees determined that it is appropriate to use TIF Funds for the Renovation, in accordance with the terms of the Theatre Renovation Agreement; and

WHEREAS, the Village will use TIF Funds to purchase a preservation easement in the east façade of the Theatre building ("*Easement Purchase Funds*") as provided in the Theatre Renovation Agreement (the "*Façade Preservation Easement*") and to pay for a portion of the Renovation ("*Renovation Payment Funds*") in accordance with the Theatre Renovation Agreement; and

WHEREAS, the Village will use the Renovation Payment Funds to pay for a portion of the Renovation, which Renovation Payment Funds eventually may be repaid to the Village if the Theatre ceases operation as a movie theater or under other circumstances stated in the Theatre Renovation Agreement;

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of La Grange, Cook County and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are incorporated into this Resolution as findings of the President and Board of Trustees.

Section 2. Approval of Easement Purchase Funds and Renovation Payment Funds. The President and Board of Trustees hereby approve use of the TIF Funds as Easement Purchase Funds for the Façade Preservation Easement and as Renovation Payment Funds for the Renovation, in a total amount of \$1,000,000. The Village President, Village Manager, and Village Finance Director are hereby authorized and directed to take the necessary and appropriate actions, and execute the necessary and appropriate documents, to implement the approval made in this Section 2 and the terms of the Theatre Renovation Agreement.

Section 3. Effective Date. This Resolution is effective on and after its passage and approval.

PASSED this ____ day of March 2009

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of March 2009

Elizabeth M. Asperger, Village President

ATTEST:

Robert N. Milne, Village Clerk

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