

# Village of La Grange



**VILLAGE BOARD MEETING**

**MONDAY, FEBRUARY 9, 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  
BOARD OF TRUSTEES REGULAR MEETING

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

AGENDA

Monday, February 9, 2009 – 7:30 p.m.

1. CALL TO ORDER AND ROLL CALL

*President Elizabeth Asperger  
Trustee Mike Horvath  
Trustee Mark Kuchler  
Trustee Mark Langan  
Trustee Tom Livingston  
Trustee James Palermo  
Trustee Barb Wolf*

2. PRESIDENT'S REPORT

*This is an opportunity for the Village President to report on matters of interest or concern to the Village.*

3. PUBLIC COMMENTS REGARDING AGENDA ITEMS

*This is the opportunity for members of the audience to speak about matters that are included on this Agenda.*

4. OMNIBUS AGENDA AND VOTE

*Matters on the Omnibus Agenda will be considered by a single motion and vote because they already have been considered fully by the Board at a previous meeting or have been determined to be of a routine nature. Any member of the Board of Trustees may request that an item be moved from the Omnibus Agenda to Current Business for separate consideration.*

- A. Resolution – Approving Amendments to the Agreement and By-Laws for the West Central Cable Agency
- B. Open Meetings Act – Review of Closed Session Minutes
- C. Consolidated Voucher 090209
- D. Minutes of the Village of La Grange Board of Trustees Regular Meeting, Monday, January 26, 2009

5. CURRENT BUSINESS

*This agenda item includes consideration of matters being presented to the Board of Trustees for action.*

- A. Revised Theater Renovation Agreement: *Referred to President Asperger*

6. MANAGER'S REPORT

*This is an opportunity for the Village Manager to report on behalf of the Village Staff about matters of interest to the Village.*

7. PUBLIC COMMENTS REGARDING MATTERS NOT ON AGENDA

*This is an opportunity for members of the audience to speak about Village related matters that are not listed on this Agenda.*

8. EXECUTIVE SESSION

*The Board of Trustees may decide, by a roll call vote, to convene in executive session if there are matters to discuss confidentially, in accordance with the Open Meetings Act.*

9. TRUSTEE COMMENTS

*The Board of Trustees may wish to comment on any matters.*

10. ADJOURNMENT

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The Village of La Grange is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations so that they can observe and/or participate in this meeting, or who have questions, regarding the accessibility of the meeting or the Village's facilities, should contact the Village's ADA Coordinator at (708) 579-2315 promptly to allow the Village to make reasonable accommodations for those persons.

**OMNIBUS VOTE**

VILLAGE OF LA GRANGE  
Administrative Offices

**BOARD REPORT**

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

FROM: Robert J. Pilipiszyn, Village Manager  
Andrianna Peterson, Assistant Village Manager

DATE: February 9, 2009

RE: **RESOLUTION - APPROVING AMENDMENTS TO THE  
AGREEMENT AND BY-LAWS FOR THE WEST CENTRAL  
CABLE AGENCY**

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The Village of La Grange is a member of the West Central Cable Agency which administers cable television franchise agreements, including public access programming, on a regional basis. The Villages of La Grange Park, Indian Head Park, Riverside and Western Springs are also members of the Agency.

In July 2007, the Cable and Video Competition Act was signed into law in Illinois. The law, Public Act 95-0009, created the Cable and Video Competition Law of 2007 and the Cable and Video Customer Protection Law.

Because the new law included broader definitions of the types of technologies covered under the Act, the West Central Cable Agency performed a comprehensive review of its membership Agreement and By-Laws to ensure that the language in the document was consistent with State law.

Changes to the Agreement and the By-Laws include:

1. Replacing references to "cable television" with "cable and video services" or "cable and video service provider" as has been defined under the new law;
2. Provisions that broaden the phrase "franchise agreements" to also include "state-issued authorizations as granted by the Illinois Commerce Commission" and that grant authority to monitor obligations such as service provisions and reporting requirements; and

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3. Technical administrative updates as required to clarify language (including statutory cites and typographical errors)

At its October 14, 2008 meeting, the West Central Cable Agency voted to approve the amended Agreement, and to request concurrence from all member communities.

Village Attorney Mark Burkland has reviewed the proposed By-Law changes and has prepared the attached Resolution which comprehensively amends the Cable Agency agreement and its By-Laws.

We recommend approval of the Resolution Approving Amendments to the Agreement and By-Laws for the West Central Cable Agency.

4-A.1

VILLAGE OF LA GRANGE

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AMENDMENTS  
OF THE AGREEMENT AND BY-LAWS  
FOR THE WEST CENTRAL CABLE AGENCY

WHEREAS, the Villages of La Grange, La Grange Park, Indian Head Park, Riverside, and Western Springs (the "*West Central Cable Agency Villages*") have worked jointly on administrating cable and video services franchise agreements, including the provision of public access programming, and are desirous of continuing to work together; and

WHEREAS, Section 10, Article VII of the Illinois Constitution of 1970 authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, the Illinois Intergovernmental Cooperation Act (the "*Act*"), 5 ILCS 220/1 *et seq.* provides further authority for intergovernmental cooperation and Section 5 of the Act specifically provides authority for the formation and execution of intergovernmental contracts; and

WHEREAS, after many years of experience and consideration it is believed that the cooperative effort of the West Central Cable Agency Villages will continue to make the best use of cable and video services and public access thereto; and

WHEREAS, the regulation of the cable and video operators, monitoring of the franchise agreements and statutory requirements and the use of the cable and video system for the residents of the West Central Cable Agency Villages will be best utilized and administered by and through a joint effort; and

WHEREAS, the West Central Cable Agency Villages desire to amend the governing documents of the West Central Cable Agency, of which they are the members, with the powers and duties as prescribed in the amended agreement and by-laws attached to and by this reference incorporated into this Resolution at Exhibit A (the "*Agreement and By-Laws*");

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 Resolution as findings of the President and Board of Trustees.

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Section 2. Approval of Amended Agreement and By-Laws. The Board of Trustees hereby approves the Agreement and By-Laws and authorize and direct the Village President and Village Clerk to sign the Agreement and By-Laws on behalf of the Village, subject to the condition stated in Section 3 of this Resolution. It is the Village's intent that the Agreement and By-Laws approved by this Resolution supersede all prior agreements between and among the West Central Cable Agency members that relate directly to the matters addressed by the Agreement and By-Laws.

Section 3. Condition of Approval by other Villages. The approval made in Section 2 of this Resolution is conditioned on approval of the Agreement and By-Laws by at least two of the remaining four West Central Cable Agency Villages.

Section 4. Effective Date. This Resolution will be in full force and effect from and after its passage and approval.

PASSED this \_\_\_\_ day of \_\_\_\_\_ 2009.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2009

\_\_\_\_\_  
Elizabeth M. Asperger, Village President

ATTEST:

\_\_\_\_\_  
Robert N. Milne, Village Clerk

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WEST CENTRAL CABLE AGENCY  
AGREEMENT

This document will serve as an Agreement amongst certain municipalities who desirous of creating the West Central Cable Agency (hereinafter referred to as "MEMBERS" of the "AGENCY").

**WHEREAS**, the Villages of La Grange, La Grange Park, Indian Head Park, Riverside and Western Springs have worked jointly on administrating cable and video services franchise agreements, including the provision of public access programming, and are desirous of continuing to work together, and

**WHEREAS**, Section 10, Article VII of the Illinois Constitution of 1970 authorizes units of government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance, and

**WHEREAS**, the Illinois Intergovernmental Cooperation Act (the "Act"), 5 ILCS 220/1 et seq. provides further authority for intergovernmental cooperation and Section 5 of the Act, 5 ILCS 220/5, specifically provides authority for the formation and execution of intergovernmental contracts, and

**WHEREAS**, after many years of experience and consideration it is believed that a cooperative effort by several communities working together will continue to make the best use of cable and video services and public access thereto, and

**WHEREAS**, the regulation of the cable and video operators, monitoring of the franchise agreements and statutory requirements and the use of the cable and video system for the residents of the member communities will be best utilized and administered by and through a joint effort, and

**WHEREAS**, the member communities desire to create an intergovernmental agency to be known as the West Central Cable Agency with the powers and duties as prescribed below, and

**WHEREAS**, with this Agreement, the MEMBERS establish their mutual rights and responsibilities concerning their membership in the AGENCY.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND OBLIGATIONS SET FORTH HEREIN**, it is agreed among the MEMBERS, as follows:

1) PREAMBLE INCORPORATED; INTEGRATION:

The preamble to this agreement is incorporated into and made a part of this agreement. This Agreement represents the full agreement and understanding of the Parties with respect to the subject matter contained herein, all prior written or oral negotiations and representations by and among the Parties being hereby merged into this Agreement. All prior representations or promises to the contrary or inconsistent herewith are hereby rescinded.

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2) ESTABLISHMENT

There is hereby established a West Central Cable Agency whose MEMBERS shall consist of those MEMBERS who are parties to this agreement including the Villages of La Grange, La Grange Park, Indian Head Park, Riverside and Western Springs plus any other governmental entity admitted to membership from time to time.

3) NEW MEMBERS

Membership is limited to communities who have a cable and video system and franchise agreement compatible with the other communities who are a party to this agreement. New MEMBERS must accept the terms of this agreement by the passage of a resolution by their Corporate Authorities that is certified by the City or Village Clerk's Office and must have their membership approved by a majority vote of the existing MEMBERS. Said vote must occur at a properly noticed public meeting.

4) PURPOSE

The AGENCY shall administer and enforce the requirements applicable to the cable and video service provider(s) serving the MEMBERS under either a franchise agreement or a state-issued authorization; shall promulgate rules for access to the cable and video system and shall have whatever other powers and duties are more fully described herein and as are delegated to the AGENCY from time to time by the Corporate Authorities of the MEMBERS.

5) MEMBERSHIP

The representative for each MEMBER shall be the Village President or Mayor. In addition, each MEMBER shall be allowed to appoint at least one (1), but no more than two (2) alternate delegates. One alternate delegate shall be the chief administrative officer of the city or village, i.e., the City or Village Manager/Administrator, and the other shall be as assigned by the MEMBER. The second alternate delegate can be any elected or appointed official as determined by the MEMBER. The record of the appointment of the second alternate delegate shall be kept in the offices of the Village or City Clerk of the respective MEMBERS. All alternate delegates will serve at the pleasure of the MEMBERS.

6) OFFICERS

Chair — By a vote of the majority of the MEMBERS at a duly noticed meeting the AGENCY shall select one (1) representative or delegate to serve as Chair of the AGENCY. The Chair shall be selected at the AGENCY's first organizational meeting after the adoption of this agreement by all participating MEMBERS and thereafter at the first meeting of each fiscal year. The Chair to be selected shall serve for a term of one (1) year and can be re-elected for additional one (1) year terms, but not to more than a maximum of three 1-year terms. The Chair of the AGENCY shall rotate between MEMBERS as much as is practical and feasible.

Vice Chair - Vice Chair shall be selected in the same fashion as the Chair and the Vice-Chair shall be responsible for the duties of Chair in the absence of the Chair.

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Administrator - An Administrator shall be hired by the AGENCY. The duties and functions of the Administrator will be as prescribed in this agreement with other duties and functions to be assigned from time to time by the AGENCY.

7) MEETINGS

Meetings of the AGENCY shall at all times be open to the public as prescribed by the Illinois Open Meetings Act. A copy of the minutes of all meetings shall be filed promptly with all MEMBERS. A quorum shall consist of a majority of the MEMBERS, and no official business shall be conducted without a quorum of MEMBERS physically present. A representative or delegate of a MEMBER will be permitted to attend by the use of a conference telephone or other communication equipment by means of which all persons participating in the meeting can communicate with each other, subject to compliance with Section 2.01 of the Open Meetings Act, 5 ILCS 120/2.01. The AGENCY shall meet at least quarterly during the fiscal year of the AGENCY, which is established as May 1st through April 30th, or as is appropriate and determined by the AGENCY.

The AGENCY may adopt its own rules of procedure which shall be in accordance with this Agreement, the Illinois State Statutes, and applicable Federal Statutes. Upon request, the AGENCY shall provide to the Corporate Authorities of the MEMBERS an annual report of activities, goals and objectives.

8) COMPENSATION.

No representatives or delegates to the AGENCY shall receive any compensation for such service. The Administrator and contractual employees may be paid such compensation as is authorized by the AGENCY.

9) POWERS AND DUTIES

The AGENCY shall determine the general policies of the administration and use of the cable and video systems. The AGENCY shall have only those powers and duties as are specifically granted to it by the MEMBERS or as may be reasonably inferred by the powers granted herein. The AGENCY shall forward copies of its minutes and other such reports and recommendations and policy decisions as may be periodically prepared and passed by the AGENCY to the MEMBERS. The AGENCY shall examine and study all matters related to the operation of cable and video services pursuant to franchise agreements or state-issued authorizations. Duties shall include but are not limited to the following:

- a) Protecting subscriber rights;
- b) Monitoring of the franchise agreements, including the review of other franchise agreements between cable and video services company(s) and other municipalities and municipal consortiums;
- c) Monitoring Federal and State policies and regulations pertaining to the operation of cable and video services under state-issued authorizations granted by the Illinois Commerce Commission;
- d) Facilitating discussions between subscribers and the cable or video operator;
- e) Providing a forum for public input regarding cable and video services;

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- f) Developing and implementing a plan for the use of cable and video services in municipal services for the MEMBERS;
- g) Assessing and developing public education programming;
- h) Coordinating video programming and cable and video systems training;
- i) Evaluating and recommending additional uses for cable and video services;
- j) Facilitating the use of local origination and public access programming;
- k) Reviewing and analyzing such data, records and reports provided by the cable and video operator(s) pursuant to the franchise agreements or applicable state law;
- l) Reviewing scholarship programs administered by cable or video operator(s);
- m) Any other related matters.

10) THE ADMINISTRATOR

The Administrator shall perform such duties and functions as outlined in a job description prepared and approved by the AGENCY. The Administrator shall, among other duties and functions:

- a) Monitor all aspects of the franchise agreements between the MEMBERS and cable or video operators, including service provision and reporting requirements;
- b) Monitor all aspects of a holder's obligations for the benefit of the MEMBERS or their residents provided for under a state-issued authorization, including service provision and reporting requirements;
- c) Coordinate all public relations including customer contacts and complaints, marketing of the cable or video system and liaison between the cable or video operators and the MEMBERS;
- d) Manage all contractual relationships approved by the AGENCY and select and supervise other employees authorized by the AGENCY;
- e) Prepare an annual budget together with monthly or quarterly fund revenue/expenditure reports for the AGENCY;
- f) Review and pay all accounts payable and monitor accounts receivable;
- g) Recommend an auditor to the AGENCY for their approval;
- h) Coordinate and administer all AGENCY activities including all AGENCY meetings, minutes and agendas and attest to the Chair's signature on all AGENCY documents that require such.
- i) Perform such other duties and functions as from time to time may be assigned by the AGENCY.

11) BUDGET

The AGENCY will prepare, no later than February 1st of each year, a proposed operating and capital improvement budget for the subsequent fiscal year. The proposed budget must be prepared in a form that complies with recognized budgeting practices of municipally sponsored intergovernmental agencies and be approved by a majority of the MEMBERS of the AGENCY.

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The proposed budget will contain a statement of estimated revenues, expenditures and a year-end fund balance for the current fiscal year and the proposed fiscal year on a line item basis. The AGENCY will deliver a copy of the proposed budget to all MEMBERS by March 15th of each year.

12) FINANCIAL OBLIGATION OF THE MEMBERS

The financial obligation to the AGENCY by each MEMBER shall be determined based upon the following formula:

$$\frac{A}{T} \text{ times } (B-C) = F$$

A = Annual Revenues; The annual revenue of the cable and video services company(s) for the MEMBER as determined by the fiscal year end financial report of the previous fiscal year for the cable and video services company(s).

T = Total Revenue; Annual revenue of the cable and video services company(s) for all MEMBERS combined as determined by the fiscal year end financial report of the previous fiscal year for the cable and video services company(s).

B = Budgeted Expenditures: A budgeted expenditure of the AGENCY as approved by a majority of the MEMBERS in the annual budget.

C = Direct Contribution: Yearly direct contribution by the cable and video services company(s) to the AGENCY.

F = Financial Obligation: Yearly financial contribution which is due to the AGENCY from each MEMBER.

13) EMPLOYEES

The AGENCY shall be empowered to hire an Administrator and any other employees as necessary that are included in the adopted annual budget of the AGENCY.

14) VOTING

Each MEMBER shall be entitled to one (1) vote on each matter submitted to a vote at any meeting of the AGENCY. Proxy or absentee voting shall not be permitted. Voting shall be conducted according to the following procedures:

a) A quorum shall consist of the majority of the MEMBERS of the AGENCY. If a quorum is present, the affirmative vote of the majority of the MEMBERS represented at the meeting and entitled to vote on a matter shall be the act of the AGENCY, unless a greater number of votes is required by this Agreement. While the Agency is comprised of five (5) members, not less than three (3) affirmative votes are necessary to take any action. *5 ILCS 120/1.02.*

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b) Voice voting shall be permitted unless one (1) or more representatives or delegates request a roll call vote or the vote requires an affirmative vote of a majority of the MEMBERS for passage.

c) An affirmative vote of the majority of the MEMBERS of the AGENCY shall be required to alter, amend or repeal this agreement. Said alteration, amendment or repeal must also be approved by a majority of the Corporate Authorities of the MEMBERS in order to take effect, however, the actions of the representatives or delegates of the AGENCY do not restrict the Corporate Authorities of a majority of the MEMBERS from altering, amending or repealing this agreement.

d) An affirmative vote of the majority of the MEMBERS will be necessary for such other matters as the AGENCY shall establish, provided that such a rule can only be established by at least an affirmative vote of the majority of the MEMBERS.

15) FINANCES

No later than sixty (60) days after the beginning of the fiscal year or the effective date of membership in the AGENCY, each MEMBERS shall submit to the AGENCY its full year proportionate share of the financial obligation as determined in Section 12. Failure to meet this obligation within said sixty (60) day period shall result in loss of status and privileges of the MEMBER in question, including voting rights, without further action by the AGENCY of any other MEMBER. A MEMBER who fails to meet this obligation within said sixty (60) day period will be responsible for all court costs and attorney fees incurred by the AGENCY in collecting the delinquent payments from the MEMBER in question.

Following the close of each fiscal year, the AGENCY shall have an independent audit of its financial records performed by a certified public accountant. The AGENCY shall distribute copies of the audit to MEMBER communities upon completion in a timely manner.

16) WITHDRAWAL FROM THE AGENCY:

All MEMBERS of the AGENCY shall be obligated to continue as MEMBERS indefinitely subject to termination and withdrawal procedures as outlined herein:

a) Any member may withdraw from membership by giving written notice of such intention to all other MEMBERS at least ninety (90) days prior to the commencement of the fiscal year. Failure to give such notice shall obligate the Member to continue for the next fiscal year period and shall obligate that Member to financial responsibilities as contained in the approved annual budget. A MEMBER who fails to meet any of the financial obligations specified herein will be responsible for all court costs and attorney fees incurred by the AGENCY in collecting the delinquent financial obligations from the MEMBER in question.

b) By a vote of a majority of the entire remaining membership of the AGENCY, any MEMBER may be expelled. Such expulsion, which shall take effect in the manner set out below, may be carried out for any one of the following reasons:

- 1) Failure to make any payments to the AGENCY;

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- 2) Failure to furnish cooperation with the AGENCY or its attorneys, agents, employees, officers or independent contractors;
- 3) Failure to carry out any obligation of a MEMBER which impairs the ability of the AGENCY to carry out its purpose and powers.

c) No MEMBER may be expelled except after written notice from the AGENCY of the alleged failure. The MEMBER shall then have not less than fifteen (15) days to cure the alleged failure. The MEMBER, within that fifteen day period, may submit written or oral reasons and arguments why expulsion should not occur. Despite expulsion, the former MEMBER continues to be fully obligated for any payments due the AGENCY and any other unfulfilled commitments of said former MEMBER which were incurred prior to the date of said expulsion.

**17) COMMENCEMENT OF THE AGENCY**

This Agreement shall be in full force and effect and legally binding upon the signatory MEMBERS as of midnight the 8th day of January, 2009 if by that date the number of signatories equal three (3) or more of the proposed MEMBER communities.

WHEREUPON, under the authority granted to me by Resolution \_\_\_\_\_ passed by the Corporate Authorities of the Village of La Grange on the \_\_\_\_ day of \_\_\_\_\_, 2009, I do hereby execute and the Clerk does hereby attest to my signature as evidence that the Village of La Grange has approved the Agreement for the reauthorization and extension of the West Central Cable Agency and authorize my signature upon this Agreement whereby this Municipality will become a MEMBER of the West Central Cable Agency.

SO AGREED BY AND AMONG THE FOLLOWING MUNICIPALITIES AND MEMBERS OF THE WEST CENTRAL CABLE AGENCY:

**VILLAGES OF LA GRANGE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LA GRANGE PARK**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**INDIAN HEAD PARK**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**RIVERSIDE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**WESTERN SPRINGS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

4-A.10

VILLAGE OF LA GRANGE  
Administrative Offices

**BOARD REPORT**

TO: Village President and Board of Trustees

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

DATE: February 9, 2009

RE: **OPEN MEETINGS ACT - REVIEW OF CLOSED SESSION MINUTES**

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State law requires that minutes of closed meetings be reviewed periodically to determine if there is any continuing need to have them remain confidential. The Village Clerk, Village Attorney and Village Manager recently conducted such a review and have determined that the minutes from the following closed sessions of the La Grange Village Board of Trustees may be released:

July 9, 2007                      YMCA Redevelopment Project / Land Exchange between the Village  
and the Park District

February 11, 2008              Retirement of Public Works Director

In order to protect the confidentiality of these minutes until such time that the Village Board has approved their release, a complete set of the minutes listed above are available for inspection by the Village Board at the Village Clerk's office in advance of your meeting on Monday night.

It is our recommendation that these closed session minutes be approved.

**VILLAGE OF LA GRANGE**

Disbursement Approval by Fund

February 9, 2009

Consolidated Voucher 090209

<u>Fund No.</u>	<u>Fund Name</u>	<u>02/09/09 Voucher</u>	<u>02/06/09 Payroll</u>	<u>Total</u>
01	General	193,557.32	279,510.57	473,067.89
21	Motor Fuel Tax			0.00
22	Foreign Fire Insurance Tax			0.00
23	TIF			0.00
24	ETSB	2,179.58		2,179.58
40	Capital Projects	4,496.42		4,496.42
50	Water	26,802.22	40,403.94	67,206.16
51	Parking	3,203.38	21,374.30	24,577.68
60	Equipment Replacement			0.00
70	Police Pension	750.00		750.00
75	Firefighters' Pension			0.00
80	Sewer	15,351.48	11,314.87	26,666.35
90	Debt Service			0.00
91	SSA 4A Debt Service			0.00
93	SAA 269			0.00
94	SAA 270			0.00
		<u>246,340.40</u>	<u>352,603.68</u>	<u>598,944.08</u>

We the undersigned Manager and Clerk of the Village of La Grange hereby certify that, to the best of our knowledge and belief, the foregoing items are true and proper charges against the Village and hereby approve their payment.

\_\_\_\_\_  
Village Manager

\_\_\_\_\_  
Village Clerk

\_\_\_\_\_  
President

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

4-C

## MINUTES

VILLAGE OF LA GRANGE  
BOARD OF TRUSTEES REGULAR MEETING  
Village Hall Auditorium  
53 South La Grange Road  
La Grange, IL 60525

Monday, January 26, 2009 - 7:30 p.m.

### 1. CALL TO ORDER AND ROLL CALL

The Board of Trustees of the Village of La Grange regular meeting was called to order at 7:33 p.m. by President Asperger. On roll call, as read by Village Manager Robert Pilipiszyn, the following were present:

PRESENT: Trustees Horvath, Kuchler, Langan, Livingston, Palermo and Wolf

ABSENT: Village Clerk Milne

OTHERS: Assistant Village Manager Andrianna Peterson  
Village Attorney Mark Burkland  
Community Development Director Patrick Benjamin  
Finance Director Lou Cipparrone  
Public Works Director Ryan Gillingham  
Fire Chief David Fleege  
Police Sergeant Marge Kielczynski

### 2. PRESIDENT'S REPORT

President Asperger extended well wishes to La Grange Patrol Officer Steve Kneifel who has been deployed to Afghanistan.

President Asperger commented on the positive effect of the recently televised broadcast of "Kitchen Nightmares" filmed at Café 36 in La Grange. In these difficult economic times, President Asperger encouraged residents to shop and dine locally.

In the absence of Village Clerk Milne, due to family illness, President Asperger requested Village Manager Pilipiszyn announce the agenda items.

With an abbreviated agenda, President Asperger indicated that an Open Meetings Training Session would take place after Trustee comments.

4-D

3. PUBLIC COMMENTS REGARDING AGENDA ITEMS

None

4. OMNIBUS AGENDA AND VOTE

A. Consolidated Voucher 090126 (\$485,045.12)

B. Minutes of the Village of La Grange Board of Trustees Regular Meeting, Monday, January 12, 2009.

It was moved by Trustee Langan to approve items A and B of the Omnibus Agenda, seconded by Trustee Horvath. Approved by roll call vote.

Ayes: Trustees Horvath, Kuchler, Langan, Livingston, Palermo, and Wolf  
Nays: None  
Absent: None

5. CURRENT BUSINESS

None

6. MANAGER'S REPORT

None

7. PUBLIC COMMENTS NOT ON AGENDA

None

8. EXECUTIVE SESSION

9. TRUSTEE COMMENTS

Seeing none, at 7:38 p.m. President Asperger noted a short recess in order to arrange for an informal setting for the Open Meetings Act training session.

10. OPEN MEETINGS ACT – TRAINING SESSION

At 7:44 p.m. President Asperger requested Village Attorney Burkland to open the session. Attorney Burkland introduced Attorney Richard Martens who has served numerous municipalities and specializes in municipal law.

4-D.1

After distributing the Guide to the Illinois Open Meetings Act booklets, Attorney Martens began the session by way of example, detailing the happenings at a public meeting whereby it was felt that a violation of the Open Meetings Act had occurred. Attorney Martens explained the items identified as thought to be in violation of the Open Meetings Act and indicated the Court's rulings on the items.

Attorney Martens proceeded to explain the three basic topical exceptions used by municipalities: personnel, real estate and litigation. General guidelines were provided to the Village Board.

Attorney Martens also provided advice on how to avoid unknowingly being in violation of the Open Meetings Act when utilizing electronic mail.

Attorney Martens opened the discussion and fielded several questions from the Trustees. The session concluded thereafter.

President Asperger thanked Attorney Martens and Village Attorney Burkland.

11. ADJOURNMENT

At 8:45 p.m. it moved by Trustee Langan to adjourn, seconded by Trustee Horvath. Approved by unanimous voice vote.

\_\_\_\_\_  
Elizabeth M. Asperger, Village President

ATTEST:

\_\_\_\_\_  
Robert N. Milne, Village Clerk

\_\_\_\_\_  
Approved Date

4-0.2

**CURRENT BUSINESS**

VILLAGE OF LA GRANGE  
Administrative Offices

**BOARD REPORT**

TO: Village President, Village Clerk, and Board of Trustees  
FROM: Robert J. Pilipiszyn, Village Manager  
DATE: February 9, 2009  
RE: REVISED THEATRE RENOVATION AGREEMENT

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Included with this Board Report are two documents—a copy of the revised Theatre Renovation Agreement and a memorandum from Village Attorney Mark Burkland summarizing the key provisions of the revised Agreement.

When the Village Board approved the Renovation Agreement on November 10, 2008, it acknowledged the possibility that the Agreement would be revised if the theatre owners requested changes related to tax matters. Shortly after the Board's approval, the theatre owners did request tax-related changes, as discussed in Mark's memorandum.

Those changes and select others have been incorporated into the Renovation Agreement, which is now being readied for execution by the theatre owner and the Village.

While the structure of the Village's contribution of \$1,000,000 to the renovation project has been revised, the fundamentals of the Village's partnership with the theatre owner, and the provisions of the Renovation Agreement memorializing that partnership, have not changed significantly. The Village is still contributing \$1,000,000, by purchasing a façade preservation easement for \$237,500 and paying up to \$762,500 of the renovation costs. All of the \$1,000,000 must be spent by the theatre owner on the renovation or be returned to the Village. The agreement actually better secures the Village's "investment" in the theater to a degree, because the \$762,500 contribution will be structured as a loan from the Village to the theatre owner secured by a junior mortgage on the theatre property.

President Asperger has asked that this matter be placed on the agenda so that the revised Renovation Agreement can be presented to the Village Board and the public, and to afford Board members the opportunity to ask any questions they have about the agreement.

No action of the Village Board is required at this time. At the Board's next meeting, action items will include approval of an Intercreditor and Subordination Agreement, final approval of the façade easement purchase, and approval of use of TIF funds for the renovation project.

5-A

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## Memorandum

Date: February 5, 2009

To: President Asperger  
and Board of Trustees

From: Mark Burkland

Cc: Robert Pilipiszyn

Re: Summary of Revisions to Agreement for Renovation  
of La Grange Theatre

Mark E. Burkland  
312,578.6557  
mark.burkland@hklaw.  
com

### 1. Introduction

The Board of Trustees in November approved the Renovation Agreement between the Village and the La Grange Theatre through which the Village would help fund renovations to the theatre. The basics of the Renovation Agreement were that the Village would purchase a preservation easement in the east façade of the theatre building for \$1,000,000 and the theatre owners would spend that money renovating the theatre building. The Village would get back the \$1,000,000 purchase price on certain occurrences, including if the theatre building stopped being used as a movie theater.

At the time the Renovation Agreement was approved, the Board discussed the fact that the structure of the Agreement might change to accommodate concerns of the theatre owners about the tax impact from the sale of the façade preservation easement. The Board approved the Agreement subject to changes being made that did not fundamentally alter the Village's participation in the theatre renovation project.

### 2. Renovation Agreement as Approved

At the time of approval, the Renovation Agreement included the following key provisions:

- (a) The Village would purchase the façade preservation easement for \$1,000,000, using TIF funds for that purchase. (Meanwhile the Village would enter into an agreement—an Intercreditor and Subordination Agreement—with First National Bank of La Grange, the theatre owners' lender, to allow the sale of the easement and to protect the easement against foreclosure.)

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- (b) All of the \$1,000,000 purchase price would be deposited by the theatre owners into an escrow account and be used only for paying the costs of the renovation. The theatre owners would add an additional \$650,000 to the escrow account.
- (c) The theatre owners would purchase the façade preservation easement back from the Village on the occurrence of any one of the following "*Easement Purchase Events*": (a) the theatre building ceased being used for a movie theatre, (b) the theatre lost its status as a sub-first run theatre, (c) the theatre owners failed to complete the renovation, or (d) the theatre owners failed to pay property taxes.
- (d) The Village would have a lien on the theatre property for any amount of the \$1,000,000 that was not repaid to the Village.
- (e) At the completion of the renovation, or the occurrence of an Easement Purchase Event, or termination of the Renovation Agreement, the Village would be entitled to the money in the escrow account up to \$1,000,000.

### 3. Renovation Agreement Revisions

After the Renovation Agreement was approved, the theatre owners did propose a revised structure whereby the Village would purchase the façade preservation easement at its fair market value, as determined by an independent appraiser. The theatre owners represented that a sale in that fashion would reduce the tax liability arising from the sale, and we confirmed the accuracy of that representation. The theatre owners secured an appraisal from an MAI-certified appraiser that set the fair market value of the easement at \$237,500.

The Renovation Agreement now reflects the revised approach to the Village's \$1,000,000 contribution to the renovation project, as follows:

- (a) The Village still will purchase a façade preservation easement, but the cost of the easement will be its fair market value of \$237,500 (the "*Easement Purchase Price*"). The theatre owner still must repurchase the façade preservation easement on the occurrence of any one of the triggering Easement Purchase Events noted in 2(c) above (now called "*Repayment Events*").
- (b) All of the easement purchase price still will be deposited into an escrow account (now called the "*Renovation Account*") and still must be used only for paying the costs of the renovation. The theatre owner still will deposit \$650,000 of its own into the Renovation Account, minus sums spent recently on the renovation as approved by the Village. The deposit of the \$650,000 now may be undertaken in installments between now and June 1, 2009, so that the theatre owner can minimize the amount of interest it pays on the money it is borrowing to make up the \$650,000 deposit.
- (c) The balance of the \$1,000,000 committed by the Renovation Agreement toward renovation of the theatre (\$762,500) will be spent by the Village as

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the Village's contribution to the renovation. The Village will segregate those funds in a Village account dedicated to the renovation, until it is time to deposit the money into the Renovation Account as noted in Paragraph (b) above. In order to achieve a measure of security that the Village's funds will be repaid on the occurrence of a Repayment Event, the Village will expend the money through the mechanism of a loan. That way, the promise of repayment will be documented in a promissory note and secured by a junior mortgage on the theatre property.

- (d) On the occurrence of a Repayment Event, the theatre owner must repay the Village the \$762,500 as well as repurchase the façade preservation easement at the price of \$237,500.
- (e) The theatre owner now has the opportunity to submit its plans for the renovation in stages, so that the project can commence quickly rather than waiting until all of the plans for all of the stages are finalized.

#### 4. "Housekeeping" Revisions

The final Renovation Agreement includes some revisions largely of a non-substantive nature. Some explanatory recitals have been added, definitions have been revised as necessary because of the payment restructuring, and miscellaneous revisions of a clarifying nature have been made. One notable change is to the name of the owner. The owner is now 80 South La Grange, Inc., an Illinois corporation—a change from the previous Seamus Knolls, L.L.C.

The Renovation Agreement is now being assembled for execution by the theatre owner and the Village. It is final or nearly final, subject only to minor adjustments that may be necessary as the Intercreditor and Subordination Agreement between the First National Bank and the Village is being finalized.

A copy of the Renovation Agreement is included with this memorandum. I will be available to answer questions about the agreement at the Board meeting, and representatives of the theater owner are expected to be present as well.

It is the expectation of the theater owner and the Village that the Renovation Agreement will be in a fully assembled, final form for execution by the end of the week of February 9.

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February 5, 2009

**THIS DOCUMENT  
PREPARED BY AND  
AFTER RECORDING  
RETURN TO:**

Holland & Knight LLP  
131 South Dearborn  
30th Floor  
Chicago, Illinois 60603  
Att'n: Mark Burkland

Above Space For Recorder's Use Only

**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**

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**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**

THIS RENOVATION AGREEMENT (this "*Agreement*") is dated as of the \_\_\_\_ day of February 2009 (the "*Effective Date*") and is by and between the VILLAGE OF LA GRANGE, an Illinois municipal corporation, (the "*Village*") and 80 South La Grange, Inc., an Illinois corporation (the "*Owner*").

IN CONSIDERATION of the recitals and the mutual covenants and agreements set forth in this Agreement, the Village and the Owner agree as follows:

**Section 1. Recitals**

A. The Theatre Property, as defined in Subsection 2.A of this Agreement, is owned and controlled by the Owner.

B. The Theatre Property is improved with the La Grange Theatre building (the "*Theatre*").

C. The Theatre is located prominently in Downtown La Grange and is closely associated with the Downtown La Grange business community. The Theatre has historical and architectural significance. In particular, the east façade of the Theatre is a widely recognized feature of Downtown La Grange.

D. The Theatre needs to be renovated to assure its long-term structural soundness and economic and market viability, including among other things extensive interior reconstruction and restoration.

E. As a community asset and an economic engine of the Village, the Theatre, if renovated in the manner contemplated by this Agreement, will stimulate business activity in Downtown La Grange and will continue to provide enhanced cultural and entertainment opportunities to residents of the Village and the surrounding area.

F. The Owner has spent approximately \$350,000 on renovation of the Theatre as of the Effective Date.

G. It is not economically feasible for the Owner to renovate the Theatre to an appropriate extent except with the assistance of the Village.

H. The Owner desires to complete the renovation of the Theatre, and to operate the Theatre as a movie theater after the completion of the proposed renovation for an indefinite period of time, because the Owner recognizes the value of the Theatre's operation to the Village and its residents.

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I. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the Village and its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with third parties for the purpose of achieving these goals.

J. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.* (the "*TIF Act*"), to purchase property and to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act.

K. To stimulate and induce redevelopment under the TIF Act, the Village, after giving all notices required by law and after conducting all public hearings required by law, created the Downtown TIF District (the "*TIF District*") by adopting the following ordinances: 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," and Ordinance No. O-86-22 adopted May 27, 1986, titled "An Ordinance Designating A Tax Increment Redevelopment Project Area For The Village Of La Grange," and Ordinance No. O-86-23 adopted May 27, 1986, titled "An Ordinance Adopting Tax Increment Financing."

L. The Theatre is located within the TIF District.

M. The Village desires to purchase a façade preservation easement in the east façade of the Theatre to further the TIF District's redevelopment plan and project and to serve the needs of the Village, using TIF District tax increment revenues, in accordance with the terms and provisions of the TIF Act and this Agreement.

N. The Village also desires to assist in the financing of the renovation of the Theatre using funds granted to the Village from TIF District tax increment revenues, to further the goals of the TIF District's redevelopment plan and project, to serve the needs of the Village, and to produce increased tax revenues for the various taxing districts authorized to levy taxes within the TIF District, all in accordance with the terms and provisions of the TIF Act and this Agreement.

O. The Village and the Owner desire that the Theatre be renovated and used in compliance with this Agreement.

P. The Village and the Owner desire to enter into this Agreement to set forth their respective rights and responsibilities with respect to the renovation and operation of the Theatre.

Q. The Theatre Property is encumbered by two mortgages granted by the Owner to a bank and, before the Village will purchase the Façade Preservation Easement or make the Renovation Loan (as those terms are defined in this Agreement), the Village must reach an agreement with that bank regarding the Village's purchase

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of the Façade Preservation Easement and regarding subordination of the bank's secured interests to that easement.

## Section 2. Definitions; Rules of Construction

A. Definitions. Whenever used in this Agreement, the following terms have the following meanings unless a different meaning is required by the context:

*"Board of Trustees"*: The President and Board of Trustees of the Village of La Grange.

*"Completion of the Renovation"*: See Subsection 9.M of this Agreement.

*"Director of Development"*: The Village's Director of Community Development.

*"Disapproval Notice"*: See Paragraph 4.A.2 of this Agreement.

*"Easement Repurchase Payment"*: See Subsection 6.B of this Agreement.

*"East Façade"*: All exterior surfaces and improvements on the entire east front of the Theatre, including among other things all walls, windows, doors, and marquees on that east front, as depicted in Exhibit A to this Agreement.

*"Effective Date"*: The date written in the first paragraph of this Agreement.

*"Examination Period"*: See Paragraph 4.A.2 of this Agreement.

*"Escrow Agent"*: The bank, title company, or similar entity that will administer the Renovation Account.

*"Escrow Agreement"*: The joint escrow trust agreement among the Village, the Owner, and the Escrow Agent establishing and governing the Renovation Account as an escrow account for the Renovation. See Paragraph 7.A.2 of this Agreement.

*"Façade Preservation Easement"*: An easement for the preservation of the East Façade, as described in Subsection 4.C of this Agreement.

*"Façade Preservation Easement Closing"*: The closing of the sale of the Façade Preservation Easement by the Owner to the Village. See Section 4 of this Agreement.

*"Façade Preservation Easement Purchase Payment"*: The sum of money paid by the Village to the Owner for purchase of the Façade Preservation Easement. See Subsection 4.D of this Agreement.

*"Façade Preservation Easement Repurchase"*: See Subsection 6.B of this Agreement.

*"Final Renovation Budget"*: See Subsection 8.B of this Agreement.

*"Final Renovation Documents"*: The Final Renovation Plans, Final Renovation Budget, and Final Renovation Schedule, collectively.

*"Final Renovation Plans"*: See Subsection 8.A of this Agreement.

*"Final Renovation Schedule"*: See Subsection 8.C of this Agreement.

*"Finance Director"*: The Village's Finance Director.

*"First National Bank"*: The First National Bank of La Grange.

*"Force Majeure"*: Strikes, lockouts, acts of God, destruction of the Theatre by fire, or other factors beyond a party's reasonable control and reasonable ability to remedy, except that Force Majeure does not include delays caused by weather conditions unless those conditions are unusually severe or abnormal in the Village considering the time of year.

*"Historical Elements"*: The historical elements and features of the Theatre existing as of the Effective Date, including without limitation the domed ceiling of the Theatre, the painted murals on the ceiling of the Theatre, and the original stage (including existing trim) within the Theatre.

*"Intercreditor Agreement"*: The agreement titled "Intercreditor and Subordination Agreement" among the Village, the Owner, and First National Bank. See Section 4 of this Agreement.

*"Parties"*: The Village and the Owner.

*"Permitted Exceptions"*: See Paragraph 4.A.2 of this Agreement.

*"Project"*: The Renovation of the Theatre and the operation of the Theatre Property as a Sub-First Run Theater, all as described in this Agreement.

*"Refinancing"*: The refinancing by the theater owners of debt secured by the Theater Property as of the Effective Date in a manner that does not adversely affect the priority of the Façade Preservation Easement or the Village's security under Section 5 of this Agreement.

*"Renovation"*: The construction of improvements to the Theatre Property, as contemplated by this Agreement and as described in the Final Renovation Documents.

*"Renovation Account"*: The escrow account established pursuant to the Escrow Agreement into which certain funds will be deposited, including the Renovation Loan, the purchase price for the Façade Preservation Easement, and funds from the Owner, and from which payments will be made for the costs of the Renovation. See Section 7 of this Agreement.

*“Renovation Loan”*: The amount of \$762,500.00. See Sections 5, 6, and 7 of this Agreement.

*“Repayment Event”*: See Subsection 6.A of this Agreement.

*“Requirements of Law”*: All applicable federal and State of Illinois laws and statutes, the Zoning Code, and the Village Code.

*“Response Notice”*: See Paragraph 4.A.3 of this Agreement.

*“Sub-First Run Theater”*: A movie theater (1) that establishes, from time-to-time as necessary, and maintains a minimum price for an individual movie ticket that satisfies the ticket-pricing criterion of a majority of the major movie studios to qualify as a sub-first run theater and (2) that receives, for showing, top box-office films that still are in circulation among theaters, before those films are released to DVD or other media or pay-per-view outlets. This definition does not restrict the showing, from time-to-time, of other types of films such as art films, documentaries, and foreign films or the hosting of limited-term film festivals.

*“Theatre Property”*: The real property commonly known as 80 South La Grange Road within the Village and legally described in Exhibit B to this Agreement.

*“Title Commitment”*: See Paragraph 4.A.1 of this Agreement.

*“Title Company”*: Chicago Title Insurance Co.

*“Title Policy”*: See Paragraph 4.A.1 of this Agreement.

*“Unpermitted Exception”*: See Paragraph 4.A.5 of this Agreement.

*“Village Code”*: The La Grange Code of Ordinances.

*“Village Engineer”*: The Village’s engineer, whether on-staff or consulting.

*“Village Manager”*: The La Grange Village Manager.

*“Zoning Code”*: The La Grange Zoning Code.

B. Rules of Construction.

1. Grammatical Usage and Construction. In construing this Agreement, feminine, or neuter pronouns are to be substituted for those masculine in form and vice versa, and plural terms are to be substituted for singular and singular for plural, in any place in which the context so requires.

2. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

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3. Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” means calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

### **Section 3. Performance of the Project**

A. Components of Project. The Project is comprised of the following components:

1. Purchase of Façade Preservation Easement. The purchase by the Village from the Owner of the Façade Preservation Easement, as provided in Section 4 of this Agreement.

2. Renovation Loan. The making of the Renovation Loan by the Village to the Owner, as provided in Section 5 of this Agreement.

3. Establishment of Renovation Account. The establishment of the Renovation Account and the coordination of payments into and disbursements from the Renovation Account, as provided in Section 7 of this Agreement.

4. Preparation of Renovation Documents. The preparation of plans, drawings, a budget, and a construction schedule for the Renovation, as provided in Section 8 of this Agreement.

5. Undertaking the Renovation. The Renovation of the Theatre by the Owner, as provided in Section 9 of this Agreement.

6. Operation of Sub-First Run Theater. The operation of the Theatre Property as a Sub-First Run Theater, as provided in Section 10 of this Agreement.

B. Schedule. Except as expressly provided otherwise in this Agreement, the Parties must exercise due diligence to perform, or to cause to be performed, all components of the Project within the time periods and schedule deadlines set forth in this Agreement. The Parties will be allowed extensions of time beyond the time periods and schedule deadlines set forth in this Agreement only for unavoidable delay caused by Force Majeure.

C. Quality of Work. The Parties must provide, perform, and complete, or cause to be provided, performed, and completed, all components of the Project in a proper and workmanlike manner, consistent with the standards of professional practice and in full compliance with, and as required by or pursuant to, this Agreement.

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#### Section 4. Purchase of Façade Preservation Easement

Within 15 days after the later of the Effective Date of this Agreement or execution of an intercreditor and subordination agreement among the Village, the Owner, and First National Bank (the "Intercreditor Agreement"), the Owner must sell to the Village and the Village must purchase from the Owner the Façade Preservation Easement in accordance with the provisions of this Section 4. The Owner acknowledges that the Village will not issue, and will not be required to issue, any building permit for work on the Renovation until after the sale of the Façade Preservation Easement has closed.

##### A. Title Commitment; Exceptions.

1. Title Commitment. The Village will obtain a title commitment (the "*Title Commitment*") from the Title Company for an ALTA 2006 Owner's Policy of Title Insurance (the "*Title Policy*") for the Theatre Property, at the Village's sole cost.

2. Village Disapproval and Permitted Exceptions. If any item on the Title Commitment is unsatisfactory to the Village, then the Village Manager, within 10 days after receipt of the Title Commitment (the "*Examination Period*"), must deliver to the Owner, in writing, all objections the Village has to anything contained or set forth in the Title Commitment (the "*Disapproval Notice*"). Any items not included in the Disapproval Notice will be deemed to be approved by the Village. All title exceptions that are approved or deemed approved by the Village will constitute permitted exceptions (the "*Permitted Exceptions*"). Notwithstanding the foregoing, the Permitted Exceptions may not include any mortgages of the East Façade except as provided in the Intercreditor Agreement.

3. Owner's Response to Village Objections. The Owner will have no obligation to cure the Village's objections but must use all reasonable efforts to cure them. The Owner may provide notice (the "*Response Notice*") to the Village Manager not later than five days after its receipt of any Disapproval Notice indicating whether, on or before the date of the Façade Preservation Easement Closing, the Owner will cure any objections or cause the Title Company to issue an endorsement insuring against such objection or matters at no cost or expense to the Owner. If the Owner does not deliver a Response Notice within the five-day period, then the Owner will be deemed, as of the fifth day, to have decided not to cure any of the Village's objections.

4. Village's Rights to Cure, Terminate. If the Owner has determined, or is deemed to have determined, that the Owner will not remove or correct, or cause the Title Company to issue an endorsement insuring against, any disapproved exception, then the Village may undertake to cure the exceptions, with the reasonable assistance of the Owner, or the Village may terminate this Agreement by written notice delivered to the Owner within 15 days after the Owner's determination. If the Owner does not receive a written termination of this Agreement within the 15-day period, then the Village will be deemed to have waived the objections and all exceptions will be deemed approved.

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5. Gap Period. If, due to the affirmative act of the Owner, an exception to title or other title defect other than a Permitted Exception is added to the Title Commitment subsequent to the Effective Date of this Agreement, but prior to the date of the Façade Preservation Easement Closing (an "*Unpermitted Exception*"), then, prior to the date of the Façade Preservation Easement Closing, the Owner must cure any such Unpermitted Exception, the failure of which will constitute a default by the Owner under this Agreement.

B. Closing Conditions. The Façade Preservation Easement Closing is subject to all of the following conditions:

1. No Encumbrances without Village Consent. During the period of time from the Effective Date through the date of the Façade Preservation Easement Closing, the Owner must not mortgage or otherwise encumber any portion of the Theatre Property, except with the prior express written consent of the Village.

2. Curing Certain Exceptions. Notwithstanding any provision of this Section 4 to the contrary, the Owner must cure exceptions to title to the Theatre Property other than Permitted Exceptions (or, as to clause (ii) of this sentence below, cure or cause deletion from the Title Policy or purchase affirmative title insurance over to the Village's reasonable satisfaction), regardless of whether raised in a Disapproval Notice, relating to (i) liens and security interests securing any loan or guaranty created by, through or under the Owner, or obligations for any loan or guaranty created by through or under the Owner, except as provided in the Intercreditor Agreement and (ii) any tax, judgment, mechanics' and other liens of a definite and ascertainable amount created by, through, or under the Owner (other than liens for ad valorem taxes and assessments not yet due and payable) or any other liens permitted by the Owner as evidenced by the Owner's execution of such lien instrument.

3. Curing Exceptions on Demand. The Owner, within 15 days after receipt of a written demand therefor, must promptly discharge, remove, or otherwise dispose of any liens, claims, or demands that are filed or asserted against any portion of the Theatre Property during the period of time from the Effective Date through the date of the Façade Preservation Easement Closing. These activities will be solely at the Owner's expense.

4. Owner as Legal Title Owner at Closing. The Owner must be the legal title owner of the entire Theatre Property on the date of the Façade Preservation Easement Closing.

C. Façade Preservation Easement Closing. If all obligations in Subsection A and B of this Section have been satisfied, then the Façade Preservation Easement Closing will take place on the earliest possible date acceptable to the Parties. At the Façade Preservation Easement Closing, the Parties will (a) execute the Façade Preservation Easement, in substantially the form attached to this Agreement as Exhibit C and (b) execute and deliver to each other the documents necessary to

consummate the Closing, including a GAP Undertaking, an ALTA Statement and other forms required by the Title Company. The Owner also must deliver to the Village an Affidavit of Title in customary form.

D. Easement Payment. At the Façade Preservation Easement Closing, the Village will pay to the Owner, as consideration for the Façade Preservation Easement, the Façade Preservation Easement Purchase Payment in the amount of \$237,500.00, which the Village and the Owner have agreed is the appraised fair market value of the Façade Preservation Easement. The Façade Preservation Easement Payment will be deposited by the Village directly into the Renovation Account.

### **Section 5. Renovation Loan**

The Village agrees to enter into a loan transaction with the Owner for the amount of \$762,500.00 (the "*Renovation Loan*"). The Renovation Loan will be non-interest bearing and will be payable on occurrence of a Repayment Event. The Renovation Loan will be memorialized by a promissory note substantially in the form included in Exhibit D to this Agreement (the "*Promissory Note*") and secured by a second mortgage of the Theatre Property in favor of the Village substantially in the form included in Exhibit D (the "*Mortgage*"). The Promissory Note and Mortgage must be executed, and the Mortgage recorded, simultaneously with the Façade Preservation Easement Closing and recording. The relative priority of the Mortgage with respect to the title of the Theatre Property will be governed by the terms and conditions of the Intercreditor Agreement.

### **Section 6. Repayment of Renovation Loan; Repurchase of Façade Preservation Easement**

A. Renovation Loan Repayment, Repayment Events. The Owner must, and hereby covenants and agrees to, repay the Renovation Loan to the Village in full (the "*Renovation Loan Repayment*") in accordance with the terms of the Promissory Note, which Promissory Note includes, among other triggering events, the events listed in this Subsection A below as repayment triggering events (each a "*Repayment Event*"). If the Owner defaults in the Renovation Loan Repayment under the Promissory Note, then the Village may foreclose the Mortgage. The Repayment Events triggering the Renovation Loan Repayment are as follows:

1. Cessation of Theatre Operation. Cessation, for any continuous period of 30 days, of the operation of a movie theater on the Theatre Property for any reason other than fire, flood, or other catastrophic event or act of God; or

2. Loss of Sub-First Run Status. Cessation of the operation of the Theatre as a movie theater of at least the status of a Sub-First Run Theater for any continuous period of 30 days, except that the Village may not deliver a demand for repayment under this Paragraph 2 at any time before 180 days after Completion of the Renovation; or

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3. Failure to Complete Renovation. Failure to achieve Completion of the Renovation in accordance with the Final Renovation Schedule; or

4. Failure to Pay Taxes. Failure by the Owner to pay all ad valorem property taxes and assessments when due on the Theatre Property as required pursuant to the Requirements of Law.

B. Façade Preservation Easement Repurchase. In addition to the Renovation Loan Repayment, on the occurrence of a Repayment Event or a failure to comply with the terms of Subsection 7.C of this Agreement, the Owner must, and hereby covenants and agrees to, repurchase the Façade Preservation Easement from the Village (the "*Façade Preservation Easement Repurchase*") within 60 days. The repurchase price to be paid by the Owner will be equal to the total actual amount paid by the Village to the Owner for the Façade Preservation Easement (the "*Easement Repurchase Payment*"). After the Owner has made the full Easement Repurchase Payment, the Village will execute any documents reasonably requested by the Owner in connection with the Façade Preservation Easement Repurchase, including without limitation a release or vacation of the easement.

C. Termination if Repayment and No Claims. After the Renovation Payment and the Easement Repurchase Payment have been made to the Village in full, and if the Village has no monetary or damage claim against the Owner under this Agreement, then this Agreement will terminate on 15 days written notice of the Owner to the Village. The parties will execute appropriate releases and waivers related to the termination.

## **Section 7. Renovation Account**

A. Establishment of Renovation Account. The Parties will establish the Renovation Account as follows:

1. Selection of Escrow Agent. The Village Manager and the Owner will designate an Escrow Agent in writing not later than 30 days after the Effective Date, which Escrow Agent may be the Title Company.

2. Escrow Agreement; Interest on Renovation Account. The Village, the Owner, and the Escrow Agent will enter into the Escrow Agreement, in substantially the form attached to this Agreement as Exhibit E, at or before the Façade Preservation Easement Closing. The Escrow Agreement may provide that the Renovation Account be interest bearing. Interest earned on the Renovation Account may be disbursed under Subsection 9.L of this Agreement for the purposes stated in that subsection and for the purpose of reimbursing the Owner for interest charges incurred on any loan taken by the Owner to fund the Owner's deposit under Subsection 7.C of this Agreement.

B. Deposit of Façade Preservation Easement Purchase Payment. At the Façade Preservation Easement Closing, the Village will deposit the Façade Preservation Easement Purchase Payment into the Renovation Account.

C. Owner Deposit. The Owner will deposit the sum calculated as [\$650,000.00 *minus* prior payments for qualified Renovation costs] (the "*Owner Deposit*") into the Renovation Account in four installments of the following amounts at the following times:

1. First Installment Deposit. \$250,000.00 at the Façade Preservation Easement Closing, simultaneously with the deposit of the Façade Easement Purchase Payment.

2. Second Deposit. \$150,000.00 by April 1, 2009, or earlier if necessary to adequately fund disbursements from the Renovation Account.

3. Third Deposit. \$150,000.00 by May 1, 2009, or earlier if necessary to adequately fund disbursements from the Renovation Account.

4. Fourth Deposit. The entire remaining balance of the Owner Deposit by June 1, 2009, or earlier if necessary to adequately fund disbursements from the Renovation Account.

D. Deposit of Renovation Loan Proceeds. Within 15 days after the Owner (1) has made its last installment deposit of funds into the Renovation Account under Subsection C of this Section, and (2) has completed the Refinancing, and (3) has executed and delivered to the Village the Promissory Note, the Mortgage, and other appropriate documents related to the Renovation Loan, the Village will deposit the proceeds of the Renovation Loan into the Renovation Account.

E. No Village Funds Required. Other than purchasing the Façade Preservation Easement and making the Renovation Loan, the Village will never be required or obligated, at any time, to contribute money for the Renovation or the Project.

F. Disbursements from Renovation Account. All disbursements from the Renovation Account must be made in accordance with the Escrow Agreement and will limit disbursements except when the following has occurred:

1. The Village Manager has submitted to the Escrow Agent a Certified Disbursement Request, in the manner set forth in Subsection 9.L of this Agreement; or

2. The Renovation Account is closed pursuant to Subsection 7.G of this Agreement.

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3. The Village is reimbursing itself for Renovation work it has caused to be undertaken, in accordance with Paragraph 18.C.4.b of this Agreement.

G. Closure of Renovation Account.

1. Date of Closure. The Renovation Account will be closed on the earlier to occur of (a) Completion of the Renovation (see Subsection 9.M of this Agreement), (b) the termination of the Escrow Agreement, (c) the date on which any Repayment Event occurs, (d) the date of termination of this Agreement pursuant to Paragraph 18.C.3 of this Agreement, or (e) the date on which the Escrow Agent is directed by the Village pursuant to Paragraph 18.C.4.a of this Agreement to close the Renovation Account.

2. Distribution of Account Funds. At the time of closure of the Renovation Account, the Escrow Agent will distribute all remaining funds within the Renovation Account in accordance with the Escrow Agreement, which will include, without limitation, the following provisions:

- a. The Escrow Agent will pay to the Village an amount equal to the lesser of (i) all funds remaining within the Renovation Account and (ii) \$1,000,000.
- b. If there are any funds remaining in the Renovation Account after distribution to the Village pursuant to Paragraph a above, then the Escrow Agent will pay all of those remaining funds to the Owner.

**Section 8. Renovation Plans, Budget, and Schedule**

Not later than March 1, 2009, and before the Director of Development issues any building permit for the Renovation, the Owner must prepare and submit to the Village Manager (i) plans, a budget, and a schedule for the Renovation and (ii) a properly prepared and executed building permit application. The documents must be prepared as provided in this Section. The Village and the Owner agree that amounts incurred for the Renovation that result in improvements or personal property that are depreciable for federal income tax purposes over a period of 15 years or less will be treated as being funded first from the amounts deposited into the Renovation Account by the Owner and thereafter from the payment made by the Village to purchase the Façade Preservation Easement (to the extent of such funds).

A. Renovation Plans.

1. Submittal. The Owner must prepare and submit final plans and specifications for the Project. Renovation plans must include, without limitation, each of the following:

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- a. Reasonable detail regarding the items of work to be completed, including construction and finish materials;
- b. The general order in which the work will be completed; and
- c. Specific identification of all Historical Elements and a statement describing how the Renovation will affect each Historical Element, how each Historical Element will be protected during the Renovation, and how the Owner will restore each Historical Element following the Completion of the Renovation.

The Renovation plans may be submitted in stages, if the Renovation is undertaken in separate phases. If plans are submitted in stages, then each submission is subject to the standards and process set forth in this Subsection. No Renovation work may be undertaken in any phase unless the Renovation plans for that phase have been approved by the Village Manager. As each set of submitted plans are approved, those plans become part of the Final Renovation Documents.

2. Village Manager Review. Within 30 days after receipt by the Village of Renovation plans from the Owner, the Village Manager either will approve or will withhold approval of the plans as submitted. The Village Manager will not unreasonably withhold or delay his approval of plans that contain sufficient detail and that substantially conform to the preliminary plans and specifications attached as Exhibit F to this Agreement. If the Village Manager withholds his approval, then the Village Manager will advise the Owner in writing about the reasons for that withholding. The Owner must revise the plans as provided by the Village Manager. The Village Manager will approve the plans after they have been properly revised (the "*Final Renovation Plans*").

3. Amendments. All proposed amendments and adjustments to the approved Final Renovation Plans must be submitted to, and approved by, the Village Manager in accordance with Paragraph 8.A.2 of this Agreement, except that the Director of Development or the Village Engineer, for matters within their respective permitting authorities, may approve minor changes, site work, and field adjustments, in accordance with all applicable Village standards.

B. Renovation Budget.

1. Submittal. The Owner must prepare and submit a detailed final budget for the Renovation. The Renovation budget must include at least (a) an estimate of the total cost of the Renovation, based on the Renovation plans, (b) a line item summary of the major components of the Renovation, and (c) a contingency reserve of \$165,000.

2. Village Manager Review. Within 30 days after receipt by the Village of a Renovation budget, the Village Manager either will approve or will

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withhold approval of the budget as submitted. The Village Manager will not unreasonably withhold or delay his approval of a budget that contains sufficient detail and includes costs that do not exceed \$1,650,000.00 or a higher amount if the Owner submits to the Village Manager financing commitments or other satisfactory evidence of the Owner's ability to pay that higher amount. If the Village Manager withholds his approval, then the Village will advise the Owner in writing about the reasons for that withholding. The Owner must revise the budget as provided by the Village Manager. The Village Manager will approve the budget after it has been properly revised (the "*Final Renovation Budget*").

3. Owner Responsibility for All Renovation Costs. The Owner will be fully responsible for all costs of the Renovation.

C. Renovation Schedule.

1. Submittal. The Owner must prepare and submit a schedule for commencement and Completion of the Renovation, including milestones or other achievement indicators. The Renovation schedule must provide that the Renovation will be undertaken continuously and diligently from commencement to completion.

2. Village Review. Within 30 days after receipt by the Village of a Renovation schedule, the Village Manager either will approve or will withhold approval of the schedule as submitted. The Village Manager will not unreasonably withhold or delay his approval. If the Village Manager withholds his approval, then the Village will advise the Owner in writing about the reasons for that withholding. The Owner must revise the schedule as provided by the Village Manager. The Village Manager will approve the schedule after it has been properly revised (the "*Final Renovation Schedule*").

**Section 9. Undertaking the Renovation**

A. Commencement of Renovation. Within 60 days after approval by the Village of all of the Final Renovation Documents, the Owner must obtain a building permit for the Renovation and commence the work on the Renovation, subject to reasonable delay due to Force Majeure. The Parties may extend the date for commencement for good cause. Any extension of the date for commencement beyond June 1, 2009, however, must be approved by the Board of Trustees.

B. Diligent Pursuit of Construction; Schedule.

1. The Owner and all of its contractors must pursue the Renovation diligently, continuously, and in accordance with the Final Renovation Schedule.

2. The Owner will be allowed extensions of any time established in the Final Renovation Schedule (a) if approved by the Village Manager in writing for good cause shown or (b) for delay caused by Force Majeure. To make a claim for an

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extension of time for delay caused by Force Majeure, the Owner must give notice within five days after any unavoidable delay commences and give notice again within five days after the delay ends. The notice must state the cause for the delay, the period or anticipated period of the delay, and the steps taken by the Owner to mitigate the effects of the delay. If the Owner fails to give a required notice then the Village Manager may disapprove any extension of time for that delay.

C. General Restrictions. Subject to any Village-approved particular terms for development, and except for minor alterations due to engineering and site work approved by the Director of Development or the Village Engineer (for matters within their respective permitting authorities), the Renovation must conform to (1) the provisions of this Agreement, (2) the approved Final Renovation Plans, and (3) all other Requirements of Law.

D. Renovation Standards.

1. General Standards. All components of the Renovation must be constructed in compliance with the approved Final Renovation Plans. All work on the Renovation must be conducted in a good and workmanlike manner and with due dispatch. All materials used for the Renovation must be new and of first-rate quality, except as expressly provided in the approved Final Renovation Plans. The Owner may use high-quality replacement materials in lieu of undertaking to reproduce original materials, if approved by the Village as part of the Final Renovation Plans.

2. Village Inspections and Approvals. The Director of Development and the Village Engineer, or their designees, will have the full right, permission, and authority to inspect, and reject or approve, work on the Renovation at all times when work is being undertaken and other reasonable times.

3. Other Approvals. When the construction of any component of the Renovation requires the permission or approval of any regulatory agency, then the Owner must take all steps required to obtain the required permission or approval. No work requiring the permission or approval of any such agency may commence without that prior permission or approval.

E. Building Permits.

1. The Owner will not receive a permit for commencement of the Renovation prior to (a) the making of deposits to the Renovation Account as provided in Subsections 7.B and 7.C of this Agreement and (b) approval by the Village of Final Renovation Documents as provided in Section 8 of this Agreement.

2. The Owner may not undertake work on the Renovation without first having secured the proper permit or permits therefor from the Village.

3. The Village may withhold issuance of a building permit, or may suspend or revoke a previously-issued building permit, when the Owner is in violation of any material term of this Agreement.

F. Insurance. The Owner must provide to the Village, prior to issuance of any building permit for the Renovation, certificates and policies of insurance evidencing the minimum insurance coverage and limits set forth in Exhibit G to this Agreement. Those policies must be in forms, and from companies, acceptable to the Village. The insurance coverage and limits in Exhibit G are the minimum coverage and limits and are not to be construed in any way as a limitation on the Owner's duty to carry adequate insurance or on the Owner's liability for losses or damages under this Agreement.

G. Approval and Use of Contractors.

1. List of Contractors; Village Approval. Prior to commencement of any work on the Renovation, the Owner must provide to the Director of Development a list of all contractors and subcontractors proposed to be used by the Owner in the Renovation (a "*List of Contractors*"). Whenever an additional contractor or subcontractor may be used by the Owner throughout the course of the Renovation, the Owner must promptly submit to the Director of Development an updated List of Contractors. Each entity on the List of Contractors must (i) register with the Village as required by the Village Code and (ii) be acceptable to, and approved in advance by, the Director of Development. The Director of Development's approval of any contractor or subcontractor will not relieve the Owner of full responsibility and liability for the provision, performance, and completion of the Renovation as required by this Agreement.

2. Required Terms. Each Owner's contract with a contractor must include the following terms:

- a. The Owner may take over and prosecute the work if the contractor fails to do so in a timely and proper manner;
- b. The contractor, and all work performed under the contract, must comply with all applicable provisions of this Agreement; and
- c. The contractor must include, in any contracts between that contractor and a subcontractor or supplier, terms substantially the same as those set forth in this Subsection G.

3. Removal of Personnel and Subcontractors. If any contractor, subcontractor, or supplier fails to perform the work in a manner consistent with commonly accepted professional practices, then the Owner, immediately after notice from the Director of Development, must remove and replace that contractor, subcontractor, or supplier. The Owner will have no claim for damages or for a delay or

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extension of any deadline set forth in the Final Renovation Schedule as a result of any such removal or replacement.

H. Damage to Public Property. The Owner must (i) maintain all streets, sidewalks, and other public property in and adjacent to the Theatre Property in a good and clean condition and free of hazards at all times during development of the Theatre Property, (ii) promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Theatre Property by the Owner or any agent of or contractor hired by, or on behalf of, the Owner, and (iii) repair any damage that may be caused by the activities of the Owner or any agent of or contractor hired by, or on behalf of, the Owner. If, within one hour after the Village gives the Owner notice to clean mud, dirt, or debris in compliance with this Subsection H, the Owner neglects or fails to clean or to undertake with due diligence to clean the affected public property, then the Village may clean the affected property, either with its own forces or with contract forces, and recover from the Owner a sum equal to the total cost incurred by the Village including without limitation administrative costs.

I. Parking. All construction-related vehicles, including passenger vehicles and construction equipment, must be parked in areas approved in advance by the Director of Development.

J. Appointment of Village Consultant. The Village may appoint a consultant to represent the Village for all matters related to the Renovation. The Village's consultant will have the authority to exercise all of the rights of the Village pursuant to this Section 9, as determined by the Village.

K. Final Inspections and Approvals. When the Owner determines that a portion of the Renovation has been properly completed, the Owner may request of the Director of Development a final inspection and approval of that portion by the Village. If there is a specifically scheduled date for completion of that portion of the work, then the notice and request must be given sufficiently in advance to allow the Village time to inspect the work and to prepare a punch list of items requiring repair or correction and to allow the Owner time to make all required repairs and corrections before that date. The Owner must promptly make all necessary repairs and corrections as specified on the punch list. The Village will not be required to approve any portion of the Renovation until it has been fully and properly completed, including without limitation all punch list work for that portion.

L. Disbursement for Completed Renovation Work. Upon approval by the Village of any portion of the Renovation of the Building, the Owner will be entitled to a disbursement from the Renovation Account upon the occurrence of each of the following:

1. Disbursement Requests. The Owner, as a condition precedent to its right to receive a disbursement from the Renovation Account, must submit to the Finance Director an originally executed request for payment in the form provided by

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the Village and accompanied by such supporting data and documentation as may be required by this Agreement, the Escrow Agreement, or the Finance Director (a "Disbursement Request"). The Finance Director, by written notice to the Owner, may designate a specific day of each month on or before which Disbursement Requests must be submitted. Each Disbursement Request must include the following minimum data and documentation, all of which must be provided on forms supplied by, or otherwise acceptable to, the Finance Director:

- a. The Owner's certification of the value of that portion of the Renovation that has been approved by the Village and for which payment is then requested, which value is to be determined pursuant to a schedule showing the value of each component part of such portion of the Renovation, and the quantity of discrete units comprising such component part of the Renovation, in form and with substantiating data and documentation acceptable to the Finance Director (a "Breakdown Schedule"). The Breakdown Schedule may not provide for overpayment to the Owner on component parts of the Renovation to be performed first.
- b. The Owner's certification that all prior disbursements have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.
- c. An Owner's sworn statement.
- d. An Owner's partial or final waiver of lien.
- e. Sworn statements from each contractor.
- f. Waivers of lien from contractors, subcontractors, and suppliers.
- g. Such other receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the Finance Director's satisfaction, the entitlement of the Owner and others being paid to the disbursement being requested.

2. Village Review and Certification. Within 10 days after receipt by the Village of a Disbursement Request, the Village must either certify or reject the Disbursement Request in writing and in accordance with the following:

- a. The Village will have no obligation to certify a Disbursement Request that does not comply with the requirements set forth in Paragraph 1 of this Subsection L or if the components of the Breakdown Schedule do not equal the amount or amounts set forth for those components in the approved Final Renovation Budget

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except for reasonable variations based on actual costs, rather than estimated costs.

- b. If a Disbursement Request fully complies with the requirements of this Agreement, then the Finance Director must (i) certify the Disbursement Request (the "*Certified Disbursement Request*") and (ii) submit the Certified Disbursement Request to the Escrow Agent.

3. Disputes. The Owner must continue to diligently pursue the Renovation during any period in which the Owner disputes any rejection or request made by the Village pursuant to this Subsection L.

M. Completion of the Renovation.

1. The Owner must notify the Director of Development in writing when it believes that all portions of the Renovation have been completed in accordance with the approved Final Renovation Plans (a "*Notice of Completion*").

2. Within 30 days after receipt of the Notice of Completion, the Director of Development must either (a) certify that all portions of the Renovation has been completed in accordance with the approved Final Renovation Plans ("*Completion of the Renovation*") or (b) notify the Owner in writing of any portion of the renovation that has not been properly completed.

**Section 10. Owner Covenants and Agreements on Use and Status of Theatre**

A. Covenant of Use as Movie Theatre. The Owner hereby covenants and agrees that it will not use, and will not permit to be used, the Theatre or the Theatre Property for any principal use other than a movie theater, including the screening of movies and the uses described in Subsections D and E of this Section. The Owner hereby covenants and agrees further that it will not undertake any renovations, alterations, or other changes to the Theatre or the Theatre Property that would change, threaten to change, or in any way impede the use of the Theatre as a movie theater.

B. Status as Sub-First Run Theater.

1. The Owner agrees that it will raise ticket prices, if necessary, and otherwise use its best efforts, diligently and expeditiously, to cause the Theatre to qualify at least as a Sub-First Run Theater. The Owner also agrees to use its best efforts to maintain the Theatre in all aspects of its operations and physical condition as necessary to achieve and keep the status of a Sub First-Run Theater.

2. Within 180 days after Completion of the Renovation, and on or before January 31 and June 30 every year thereafter, the Owner must submit to the Village Manager a written report regarding the status of the Theatre, including the

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extent to which the Theatre has achieved Sub-First Run Theater status and all actions undertaken by the Owner to secure Sub-First Run Theater status.

C. Notice of Cessation of Operations. The Owner must immediately deliver to the Village written notice of any cessation of the operation of the Theatre as a Sub-First Run Theater or as a movie theater, for any period of time exceeding seven consecutive days.

D. Live Theater. The Owner is permitted to use the Theatre for live theater performances from time to time.

E. Community Uses. The Owner is permitted to use, and must provide reasonable opportunities for schools and civic organizations located within the Village to use, space within the Theatre for local stage productions, variety shows, dancing and singing opportunities, and similar public and civic uses.

F. Compliance with Laws. The Owner may not use the Theatre Property except in compliance with this Agreement and with all applicable Requirements of Law, including without limitation the Zoning Code. The Village, at the Owner's request, may consider modifications or amendments to Requirements of Law within the Village's jurisdiction. The Village represents that the use of the Theatre Property as a movie theater is authorized by the La Grange Zoning Code.

G. Future Maintenance and Improvements. The Owner has committed to make additional improvements to the Theatre in the future of a value of at least \$350,000. Future improvements must be made as follows:

1. Interior Improvements. At any time after Completion of the Renovation, the Owner may undertake maintenance or improvement of, or alteration to, the interior of the Theatre so long as that maintenance, improvement, or alteration does not violate any term of this Agreement or other Requirement of Law.

2. Exterior Improvements. The Owner covenants and agrees that, after the Completion of the Renovation, it will undertake the maintenance and improvement of the entire east exterior of the Theatre as necessary to preserve the east exterior in a condition of good repair.

3. Future Façade Improvements. The Parties acknowledge the Owner's intention to undertake a more-substantial restoration of the East Façade to provide for its long-term integrity and to restore some of its historical features. That restoration cannot be undertaken as part of this Agreement due to lack of sufficient funding. The Village will cooperate with the Owner when the Owner determines it is able to undertake the restoration, which will be undertaken in accordance with the terms of the Façade Preservation Easement.

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4. Village Matching of Funds. When the Owner undertakes additional improvements to the Theatre, then Owner may petition the Village for matching payments by the Village for those improvements. The Village may provide matching funds or other financial support for any future improvements made pursuant to this Subsection G, but will not be obligated to do so. If the Village determines to provide matching funds or other financial support for future improvements, then the Village may determine to impose an amusement tax or similar tax in an amount not exceeding 50¢ per ticket. The Owner will not object to the imposition of any such tax.

#### **Section 11. Theatre Review Commission**

The Village may create an advisory theatre review commission, comprised of the Village Manager, the Finance Director or Director of Development, and Theatre representatives, to advise the Board of Trustees on matters related to the Renovation and to review and monitor operation of the Theatre. The Owner will participate in, and will not object to, the creation and operation of any such theatre review commission.

#### **Section 12. Books and Records**

The Owner must keep accounts, books, and other records of charges and costs incurred in performing all components of the Renovation in such manner as to permit verification of all entries. The Owner must make all such material available for inspection by the Finance Director at all reasonable times during this Agreement and for a period of two years after the date of Completion of the Project. Copies of such material must be furnished at the request, and sole expense, of the Village.

#### **Section 13. Waiver of Fees**

The Village will, and does hereby agree to, waive all Village fees and charges for applications, inspections, permits, utility connections and taps, and similar matters.

#### **Section 14. Liability and Indemnity of Village**

A. Village Reviews. The Owner acknowledges and agrees that the Village is not, and will not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Theatre Property or the Renovation, or the issuance of any approvals, permits, certificates, or acceptances for the development or use of the Theatre Property, and that the Village's review and approval of those plans and issuance of those approvals, permits, certificates, or acceptances does not, and will not, in any way, be deemed to insure the Owner, or any of its heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time.

B. Village Procedures. The Owner acknowledges and agrees that all notices, meetings, and hearings have been properly given and held by the Village with respect

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to the approval of this Agreement and agrees not to challenge the Village's approval on the grounds of any procedural infirmity or of any denial of any procedural right.

C. Indemnity. The Owner agrees to, and does hereby, indemnify the Village and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys (collectively the "*Indemnified Parties*") from any and all claims and actions that may be asserted at any time by any person or entity against any of the Indemnified Parties in connection with (1) the Village's review and approval of any plans for the Project, (2) the issuance of any approval, permit, certificate, or acceptance in connection with the Project, and (3) the development, construction, maintenance, or use of any portion of the Theatre Property. The agreement and duty of the Owner to indemnify the Indemnified Parties does not apply to the use of the Theatre Property by the Village under Subsection 10.E for community events or for Village events.

In addition, the Owner agrees to, and does hereby, indemnify the Indemnified Parties from any and all claims, actions, charges, fees, penalties, or liabilities asserted by the Internal Revenue Service or any other governmental agency related in any way to this Agreement or any of the payments or transactions contemplated under this Agreement.

D. Defense Expense. The Owner will, and does hereby agree to, pay all expenses, including without limitation legal, accounting, and other professional fees and administrative costs and expenses, incurred by the Village in defending itself or producing, or responding to requests for, testimony, information, or documents with regard to any and all of the claims or actions referenced in Subsection C of this Section 14.

## Section 15. Nature, Survival, and Transfer of Obligations

A. Binding on Owner. All obligations assumed by the Owner under this Agreement are binding on the Owner, on any and all of the Owner's successors and assigns, and on any and all successor legal or beneficial owners of record of all or any portion of the Theatre Property.

B. Notice to Successors. To assure that all successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Owner must:

1. Funds for Recording Document. Deposit with the Village Clerk, at the time of execution of this Agreement, a sufficient sum, in current funds, to reimburse the Village for the actual cost of recording this Agreement against the Theatre Property with the Cook County Recorder of Deeds; and

2. Inclusion in Instruments of Conveyance. Incorporate, by reference, this Agreement into any and all instruments of sale, assignment, transfer, or other

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conveyance of any right or approval conferred or granted by the Village or this Agreement or any legal or beneficial interest in the Property.

C. Village Approval of Successor Owners.

1. No Transfer without Village Approval. Except for a Transfer (as that term is defined in this paragraph) to a Qualified Buyer (as that term is defined in Paragraph 4 of this subsection below) or to an affiliate or subsidiary of the Owner, the Owner may not, and acknowledges that it does not have the right to, sell, assign, transfer, or otherwise convey any rights or approvals conferred or granted by the Village or this Agreement or any legal or beneficial interest in the Property (a "Transfer") without the prior, express, written approval of the Village. For purposes of this Agreement, a "Transfer" also includes, without limitation, the sale, assignment, transfer, or conveyance of any majority ownership interest in the corporate stock of the Owner to any entity that does not possess any ownership interest in the Owner as of the Effective Date of this Agreement.

2. Notice to Village of Proposed Transfer. The Owner must give notice to the Village of any proposed Transfer, including without limitation a proposed Transfer to a Qualified Buyer. The Village will have 60 days after receipt of such notice to approve or disapprove the proposed Transfer and such further time to which the Owner agrees (the "Notice Period"). During the Notice Period, the Owner must provide all information requested by the Village about the proposed transferee, including without limitation financial information and development and management experience sufficient for the Village to make an informed, reasoned determination regarding the qualifications of the proposed transferee to fulfill the obligations of this Agreement and to properly and successfully manage and operate the Project.

3. Approval or Disapproval. The Village must not unreasonably delay its decision whether to approve a proposed transferee. If the Village disapproves a proposed transferee, then the Village must state its reasons for disapproval. If the Village does not respond to the notice within the Notice Period, then the Village will be deemed to have approved the proposed Transfer.

4. Qualified Buyer. For purposes of this Subsection C, a "Qualified Buyer" means a person or entity that (a) has been approved by a major film distribution company for a contract to receive movies for screening, (b) has had successful experience managing and operating a first-run or sub-first run theater, (c) has delivered to the Village a statement of financial wherewithal to complete, maintain, and operate the Project, as applicable, and (d) has delivered to the Village a binding commitment of funds for purchase from a reputable, locally or nationally recognized financial institution, bank, insurance company, pension fund, or other substantially similar institution, as may be requested by the Village in its sole and absolute discretion as to the review of financing commitments.

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D. Owner Still Bound. Notwithstanding any Transfer, the Owner will remain fully liable for all of the Owner's obligations under this Agreement accruing prior to the effective date of any such Transfer and for the duty to indemnify the Village as provided in Subsection 14.C of this Agreement against all claims that accrue, or that are related to any matter occurring, prior to the effective date of any such Transfer regardless of when any such claim may be asserted. The Owner will not be liable for any obligation under this Agreement that first arises after the effective date of any such Transfer unless the Transfer is to an affiliate or subsidiary of the Owner.

E. Assignment by Village. The Village may not assign this Agreement, in whole or in any part, or any of its rights or obligations under this Agreement, without the prior express written approval of the Owner, which approval must not be unreasonably withheld.

### **Section 16. Term; Binding Effect**

The provisions of this Agreement will run with and bind the Theatre Property and the Theatre, and will inure to the benefit of, and be enforceable by, the Village, the Owner, and any of their respective legal representatives, heirs, grantees, successors, and assigns. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then the affected privilege or right will continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current President of the United States, or for any shorter period that may be required to sustain the validity of the affected privilege or right. Specifically, and without limitation of the foregoing, the obligations of the Village and the Owner under this Agreement will survive the Façade Preservation Easement Closing.

### **Section 17. Enforcement**

A. General. A Party may enforce or compel the performance of this Agreement in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, except that the Owner agrees that it will not seek, and does not have the right under any circumstances to seek, to recover a judgment for monetary damages against the Village or any of its elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys on account of the negotiation, execution, or breach of this Agreement.

B. Injunctive Relief for Violations of Covenants. Specifically, but not in any way limiting the provisions of Subsection A above, the Village may seek a temporary restraining and temporary and permanent injunctive relief against the Owner for any violation or threatened violation of any covenant or agreement set forth in Section 8 of this Agreement.

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C. Prevailing Party. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement pursuant to this Section 17, the prevailing party will be entitled to reimbursement from the other party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

## Section 18. Breach

A. Breaches by Owner. The following matters will constitute a breach of this Agreement by the Owner:

1. The failure of the Owner for a period of 15 days after written notice thereof to perform any covenant contained in this Agreement concerning the existence, structure, or financial condition of the Owner, except that if the default cannot be cured within said 15 days and the Owner, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.

2. Failure of the Owner in the performance of any provision of this Agreement or to keep and perform any covenant, warranty, or obligation contained in this Agreement, except that if the default cannot be cured within said 15 days and the Owner, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.

3. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Owner in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Owner for any substantial part of the Property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order un-stayed and in effect for a period of 60 consecutive days.

4. The commencement by the Owner of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Owner to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Owner or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Owner generally to pay such entity's debts as such debts become due or the taking of action by the Owner in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

5. Failure to have funds to meet the Owner's obligations.

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6. Abandonment by the Owner of the Renovation or the Project. Abandonment will be deemed to have occurred when work stops on the Theatre for more than 30 days for any reason other than Force Majeure.

7. Failure to achieve Completion of the Renovation in accordance with the Final Renovation Schedule.

8. Failure of the Owner to comply with the Requirements of Law in relation to any portion of the Project.

B. Breaches by Village. The following matters will constitute a breach of this Agreement by the Village:

1. Failure of the Village for a period of 15 days after written notice thereof to perform any covenant contained in this Agreement concerning the existence, structure, or financial condition of the Village, except that if the default cannot be cured within said 15 days and the Village, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.

2. Failure of the Village in the performance of any provision of this Agreement or to keep and perform any covenant, warranty, or obligation contained in this Agreement, except that if the default cannot be cured within said 15 days and the Village, within said 15 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice.

C. Remedies for Breach. In the case of a breach of this Agreement:

1. General. The breaching Party, on written notice from the non-breaching Party, must take immediate action to cure or remedy such breach. If, in such case, any monetary breach is not cured, or if in the case of a non-monetary breach, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such breach is not cured or remedied within a reasonable time, but in no event more than 15 additional days unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such breach, including but not limited to proceedings to compel specific performance of the breaching Party's obligations under this Agreement.

2. Discontinuation of Enforcement Proceedings. If the Village has proceeded to enforce its rights under this Agreement and if those proceedings have been discontinued or abandoned for any reason, then, and in every such case, the Owner and the Village must be restored respectively to their several positions and rights hereunder, and all rights, remedies, and powers of the Owner and the Village will continue as though no such proceedings had been taken.

3. Termination by Village. In addition to those remedies available pursuant to Paragraph 1 of this Subsection C, the Village will have the right, but not the obligation, to terminate this Agreement, effective immediately, in the event of a material breach by the Owner and after expiration of the 15-day cure period set forth in Paragraph 1 of this Subsection C.

4. Failure to Achieve Completion of the Renovation. Upon the failure of the Owner to achieve Completion of the Renovation in accordance with the Final Renovation Schedule, the Village will have the right, but not the obligation, to pursue any one or both of the following remedies in addition to or in lieu of those remedies available pursuant to Paragraphs 1 and 3 of this Subsection C:

- a. The Village may direct the Escrow Agent to close the Renovation Account and to distribute the remaining funds within the Renovation Account pursuant to Subsection 7.F of this Agreement.
- b. The Village may cause the Renovation to be completed in accordance with the Final Renovation Plans and may draw on the Renovation Account to reimburse itself for all costs and expenses, including legal and administrative costs, for such work. If the Owner fails to fully reimburse the Village for all costs and expenses incurred pursuant to this Paragraph 18.C.4.b within 30 days after receipt of an invoice therefor, and the Renovation Account has no funds remaining in it or is otherwise unavailable to finance such work, then the Village will have the right to place a lien on the Theatre Property for all such costs and expenses in the manner provided by law.

## Section 19. General Provisions

A. Notice of Bankruptcy. The Owner must give the Village written notice not less than 30 days prior to commencement by the Owner of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Owner to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Owner or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors, or the failure of the Owner generally to pay such entity's debts as such debts become due, or the taking of action by the Owner in furtherance of any of the foregoing.

B. Making of Notices Generally. Any notice or communication required or permitted to be given under this Agreement must be in writing and must be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic Internet mail ("*e-mail*").

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Facsimile notices will be deemed valid only to the extent that they are actually received by the individual to whom addressed and followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below.

E-mail notices will be deemed valid only to the extent that they are opened by the recipient on a business day at the address set forth below and followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below.

Unless otherwise provided in this Agreement, notices will be deemed received after the first to occur of (a) the date of actual receipt, or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (c) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection 17.A, each party to this Agreement has the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address will be effective until actually received.

Notices and communications to the Village must be addressed to, and delivered at, the following address:

	<u>with a copy to:</u>
Village Manager	
Village of La Grange	Mark E. Burkland
53 South La Grange Road	Holland & Knight LLP
P.O. Box 668	131 South Dearborn Street, 30th Floor
La Grange, Illinois 60525	Chicago, Illinois 60603
Telephone: (708) 579-2318	Telephone: (708) 578-6557

Notices and communications to the Owner must be addressed to, and delivered at, the following address:

	<u>with a copy to:</u>
80 South La Grange, Inc.	Gerald P. Callaghan
80 South La Grange Road	Freeborn & Peters LLP
La Grange, Illinois 60525	311 South Wacker Drive, Ste. 3000
	Chicago, Illinois 60606

C. Time of the Essence. Time is of the essence in the performance of this Agreement.

D. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement are cumulative and are not exclusive of any other rights, remedies, and benefits allowed by law.

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E. Non-Waiver. The Village is under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the Village to exercise at any time any right granted to the Village will not be deemed or construed to be a waiver of that right, nor will the failure void or affect the Village's right to enforce that right or any other right.

F. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent will be in writing.

G. Governing Law. This Agreement will be governed by and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

H. Severability. It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property will not be impaired thereby, but the remaining provisions will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

I. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matters of this Agreement.

J. Interpretation. This Agreement will be construed without regard to the identity of the party who drafted the various provisions of this Agreement and as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result, any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

K. Exhibits. Exhibits A through G attached to this Agreement are, by this reference, incorporated into and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement.

L. Amendments and Modifications. No amendment or modification to this Agreement will be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

M. Changes in Laws. Unless otherwise provided in this Agreement, any reference to the Requirements of Law will be deemed to include any modifications of, or amendments to, the Requirements of Law that may occur in the future.

N. Authority to Execute. The Village hereby warrants and represents to the Owner that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. The Owner hereby warrants and represents to the Village (1) that it is the record and beneficial owner of fee simple title to the Property, (2) that no other person has any legal, beneficial, contractual, or security interest in the Property, (3) that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement, (4) that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (5) that neither the execution of this Agreement nor the performance of the obligations assumed by the Owner will (a) result in a breach or default under any agreement to which the Owner is a party or to which it or the Property is bound or (b) violate any statute, law, restriction, court order, or agreement to which the Owner or the Property is subject.

O. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person may be made, or will be valid, against the Village or the Owner.

P. Recording. The Village will record this Agreement against the Property, at the sole cost and expense of the Owner, with the Office of the Recorder of Cook County promptly following the full execution of this Agreement by the Parties.

Q. Counterparts. This Agreement may be executed in counterparts, each of which will constitute an original document and together will constitute the same instrument.

IN WITNESS WHEREOF, the Village and the Owner have caused this Agreement to be approved and executed by their properly authorized representatives as of the Effective Date.

**Village of La Grange**

By: \_\_\_\_\_  
Village President

Attest:

By: \_\_\_\_\_  
Village Clerk

**[Owner's signature on next page]**

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**80 South La Grange, Inc.**

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

# 5724438\_v16

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## EXHIBIT A TO RENOVATION AGREEMENT

### Depiction of East Façade

[drawing / photographs to be inserted]

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## EXHIBIT B TO RENOVATION AGREEMENT

### Legal Description of Theatre Property

**To be confirmed:**

LOTS 9 AND 10 IN BLOCK 22 IN LA GRANGE IN THE EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  (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.

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## EXHIBIT C TO RENOVATION AGREEMENT

### 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 E 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, 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 approval 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 will maintain the Theatre, including the East Façade, in good structural and surface repair and condition at all times.

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.

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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 are subject to the provision of the first mortgages 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 specifying the violation, and the failure of the Grantee 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 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;

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- (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 to cure the violation within 30 days after written notice by the Grantee to the Grantor or if the violation is not reasonably curable within a 30-day period the failure of the Grantee 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 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

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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 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 with 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.

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. 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**

By: \_\_\_\_\_, Village President

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State of Illinois     )  
                                  )  SS  
County of Cook     )

I, \_\_\_\_\_, a notary public in and for the County of Cook do hereby certify that \_\_\_\_\_, who is personally known to me as the President of 80 South La Grange, Inc. in the foregoing Grant of Easement personally appeared before me this day and acknowledged that he signed and delivered said Grant of Easement as his own free and voluntary act and as the free and voluntary act of 80 South La Grange, Inc. for the uses and purposes set forth therein.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]

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EXHIBIT D TO RENOVATION AGREEMENT

D-1: PROMISSORY NOTE

THIS NOTE IS SECURED BY A MORTGAGE.

\$762,500.00 La Grange, Illinois

\_\_\_\_\_, 2009

80 South La Grange Road	La Grange	Illinois	60525
Property Address	City	State	Zip Code

1. **Borrower’s Promise to Pay.** For value received, Borrower unconditionally promises to pay to the order of the **VILLAGE OF LA GRANGE (“Lender”)**, in lawful money of the United States of America and in immediately available funds, \$762,500.00 (“**Principal**”) for the purposes of renovations to the La Grange Theatre (“**Theatre**”) located on the property commonly known as 80 S. La Grange Road, La Grange, Illinois and described on **Exhibit A** attached hereto (“**Theatre Property**”). Borrower understands that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the “**Note Holder**.”

2. **Payment.** The obligations of this Note are secured by a Mortgage recorded against the Theatre Property.

Borrower must pay the full amount of the Principal upon the occurrence of a Repayment Event as defined in Section 3 of this Note.

3. **Repayment Event.** Repayment Events triggering Payment of this Note pursuant to Section 2 of this Note are set forth in and governed by Subsection 6.A of that certain 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 Theater Operation Covenants” and dated February \_\_\_\_\_, 2009 (the “**Renovation Agreement**”), and are as follows:

A. Cessation of Theatre Operation. Cessation, for any continuous period of 30 days, of the operation of a movie theater on the Theatre Property for any reason other than fire, flood, or other catastrophic event or act of God; or

B. Loss of Sub-First Run Status. Cessation of the operation of the Theatre as a movie theater of at least the status of a Sub-First Run Theater for any continuous period of 30 days, except that the Village

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may not deliver a demand for repayment under this Paragraph 2 at any time before 180 days after Completion of the Renovation; or

- C. Failure to Complete Renovation. Failure to achieve Completion of the Renovation in accordance with the Final Renovation Schedule; or
- D. Failure to Pay Taxes. Failure by the Owner to pay all ad valorem property taxes and assessments when due on the Theatre Property as required pursuant to the Requirements of Law.

- 4. **Borrower's Failure to Pay as Required.** If Borrower does not pay the full amount of Principal on time as provided in Section 2, Borrower will be in default. If Borrower is in default, in addition to payment of the full amount of Principal, the Note Holder will have the right to be paid back for all of its costs and expenses to the extent not prohibited by applicable law. Those expenses include, but are not limited to, any and all reasonable attorneys' fees.
- 5. **This Note Secured by a Mortgage.** In addition to protections given to the Note Holder under this Note, a Mortgage, dated as of even date herewith, protects the Note Holder from possible losses which might result if Borrower does not keep the promises which Borrower makes in this Note or under such Mortgage. That Mortgage describes, among other things, how and under what conditions Borrower may be required to make immediate payment in full of all amounts that Borrower owes under this Note.
- 6. **Borrower's Payment Before It Is Due.** Borrower has the right to make my Principal payment at any time before it is due. Payment of Principal before it is due is known as a "prepayment." When Borrower makes a prepayment, Borrower will tell the Note Holder in a letter that Borrower is doing so. A prepayment of all the unpaid Principal is known as a "full payment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment." Borrower may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will apply all of any prepayments first toward any outstanding charges, and then toward the Principal that Borrower owes under this Note. If Borrower makes a partial prepayment, there will be no delays in the due date in the amounts of my Principal payment. Borrower may make a full prepayment at any time.
- 7. **Borrower's Waiver.** Borrower hereby waives presentment for payment, notice of dishonor, and protest.
- 8. **Giving of Notices.** Any notice that must be given to me under this Note will be deemed given when deposited with the United States Postal Service, postage prepaid, addressed as follows: **80 South La Grange, Inc.**, 89 South La Grange Road, La Grange, Illinois 60525. Notice will be delivered or

mailed to Borrower at a different address if Borrower gives the Note Holder a notice of a different address. Any notice that must be given to the Note Holder under this Note will be deemed given when deposited with the United States Postal Service, postage prepaid, addressed as follows: **Village Manager, Village of La Grange**, 53 South La Grange Road, P.O. Box 668, La Grange, Illinois 60625. A notice will be mailed to the Note Holder at a different address if Borrower is given a notice of that address.

9. **Governing Law.** This Note will be governed by, and construed and interpreted in accordance with, the laws of the State of Illinois.
10. **Defined Terms.** Any initially capitalized term not defined herein shall have the respective meaning ascribed to such terms as set forth in the Renovation Agreement, as amended from time to time.

**BORROWER:**

**80 South La Grange, Inc.**, an Illinois corporation

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

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**Exhibit A to Promissory Note**  
**Legal Description of Theatre Property**

[legal description of Theatre Property to be inserted]

**Form of Promissory Note and Mortgage**  
**Related to Renovation Loan**

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**D-2: MORTGAGE**

This instrument was prepared  
by and after recording should  
be returned to:

Mark E. Burkland, Esq.  
Holland & Knight LLP  
131 South Dearborn Street  
30<sup>th</sup> Floor  
Chicago, IL 60603

*This space reserved for Recorder's use only.*

**MORTGAGE, ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

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**MORTGAGE, ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT** (this "**Instrument**") is made to be effective this \_\_\_ day of \_\_\_\_\_ 2009, by and between **80 SOUTH LA GRANGE, INC.**, an Illinois corporation, as mortgagor, (the "**Borrower**") to and for the benefit of the **VILLAGE OF LA GRANGE**, an Illinois municipal corporation, as mortgagee (the "**Lender**").

Borrower is indebted to Lender in the principal amount of \$762,500, as evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Instrument, and maturing on the occurrence of a Repayment Event as defined in Section 3 of the Promissory Note (the "**Maturity Date**").

**TO SECURE TO LENDER** (i) the repayment of the Indebtedness (defined below), and all renewals, extensions and modifications of the Indebtedness, and (ii) the agreement by Borrower as set forth in that certain 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 Theater Operation Covenants" and dated February \_\_\_\_, 2009 the "**Theatre Renovation Agreement**", as amended from time to time (the "**Agreement**") dated as of \_\_\_\_\_, 2009, by and between Lender and Borrower, Borrower hereby mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in the Village of La Grange, Cook County, State of Illinois and described in Exhibit A attached to this Instrument.

Borrower represents and warrants that Borrower is the holder of the fee simple title to the Land and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property.

**Covenants.** In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

**DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), will have the following meanings (provided, however, any initially capitalized term not defined herein will have the respective meaning ascribed to such terms as set forth in the Theatre Renovation Agreement:

"**Borrower**" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

"**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

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**“Fixtures”** means all property owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

**“Improvements”** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

**“Indebtedness”** means the principal of and all other amounts due at any time under, the Note or this Instrument, including prepayment premiums, late charges, and advances to protect the security of this Instrument.

**“Land”** means the land described in Exhibit A.

**“Leases”** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals.

**“Lender”** means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.

**“Mortgaged Property”** means all of Borrower’s present and future right, title and interest in and to all of the following:

the Land;

the Improvements;

the Fixtures;

the Personalty;

all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and

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all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

all Rents and Leases;

all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument;

all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; and

all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

**"Note"** means the Promissory Note described on Page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

**"Personalty"** means all

accounts (including deposit accounts) of Borrower related to the Mortgaged Property;

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equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);

other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures);

any operating agreements relating to the Land or the Improvements;

any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;

all other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and

any rights of Borrower in or under letters of credit.

**"Rents"** means all rents, revenues and other income of the Land or the Improvements, parking fees, vending machine income and fees and charges services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

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**PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY; COMPLIANCE WITH LAWS; USE OF PROPERTY.** Except to the extent otherwise agreed to by Lender, Borrower must (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Land which may become damaged or be destroyed; (b) keep the Improvements in good condition and repair, without waste, and free from mechanic's or other liens or claims for liens; and (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Lender.

**IMPOSITIONS.** Borrower must pay before any penalty attaches all general taxes, and must pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Mortgaged Property when due, and must, upon written request, furnish to the Lender duplicate receipts therefor. To prevent default hereunder Borrower must pay in full under protest, in the manner provided by statute, any tax or assessment which Borrower may desire to contest.

**PREPAYMENT.** At such time as the Borrower is not in default either under the terms of the Note or under the terms of this Instrument, the Borrower will have such privilege of making prepayments on the principal of the Note (in addition to the required payments) as may be provided in the Note.

**INSURANCE.** To the extent required by Lender, Borrower must keep all Improvements now or hereafter situated on the Land insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the Indebtedness, all in companies satisfactory to the Lender, under insurance policies payable, in case of loss or damage, to Lender, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and must deliver all policies, including additional and renewal policies, to the Lender, and in case of insurance about to expire, must deliver renewal policies not less than ten days prior to the respective dates of expiration.

**PROTECTION OF LENDER'S SECURITY.** In case of default therein, Lender may, but need not, make any payment or perform any act hereinbefore required of Borrower in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other moneys advanced by Lender to protect the Mortgaged Property and the lien hereof, will be so much additional Indebtedness and will become immediately due and payable without notice and with interest thereon at the highest rate now permitted by Illinois law. Inaction of Lender may never be considered as a waiver of any right accruing to the Lender on account of any default hereunder on the part of the Borrower. The Lender making any payment hereby

authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

**PAYMENT OF INDEBTEDNESS; EVENTS OF DEFAULT.** Borrower must pay each item of Indebtedness when due according to the terms hereof. At the option of the Lender and without notice to Borrower, all unpaid Indebtedness will, notwithstanding anything in the Note or in this Instrument to the contrary, become due and payable (a) immediately in the case of default in making payment of any installment of principal on the Note, or (b) when default occurs in the performance of any other agreement of the Borrower herein contained. In addition to any other defaults specified in the Note or this Instrument, the following constitutes a default under the Note and this Instrument, entitling Lender to exercise any and all rights and remedies available to it under the Note and this Instrument, at law, in equity or otherwise:

If Borrower files a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar statutes or laws, now or hereafter in effect;

If Borrower files an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay his or their debts as they mature;

If, within thirty (30) days after the filing against Borrower of any involuntary proceeding under the Federal Bankruptcy Act or similar law or statute, now or hereafter in effect, such proceedings have not been dismissed or vacated;

If all or a substantial part of the assets of Borrower is or are attached, seized, subjected to a writ or distress warrant, or is or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;

If Borrower is adjudicated a bankrupt or has an order for relief entered in respect of him by any bankruptcy court;

If Borrower makes an assignment for the benefit of creditors or admits in writing his inability to pay his debts generally as they become due or consents to the appointment of a receiver or trustee or liquidator of all or the major part of his property or the Mortgaged Property;

If any order issues appointing a custodian, receiver, trustee or liquidator of Borrower or all or a major part of his properties or the Mortgaged Property is not vacated within thirty (30) days following the entry thereof;

If a notice of lien, levy or assignment is filed of record with respect to the Mortgaged Property or with respect to all or a major part of the assets of Borrower by the United States government or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental authority, or if any taxes or

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debts owing at any time to any one of them becomes an encumbrance upon the Mortgaged Property or any other assets of Borrower and any of the foregoing is not released within thirty (30) days after the same becomes an encumbrance;

If Borrower is dissolved;

If Borrower defaults under any provision of the Agreement, and such default continues beyond any applicable cure period; or

If any default occurs with respect to any indebtedness of Borrower for borrowed money, which has not been effectively cured or waived and which would enable the obligee to accelerate the maturity of the indebtedness or a judgment or judgments for the payment of money is or are outstanding against Borrower and the same is or are not satisfied or stayed within thirty (30) days.

**FORECLOSURE; EXPENSE OF LITIGATION.**

When all or any part of the Indebtedness becomes due, whether by acceleration or otherwise, or if Borrower is otherwise in default under this Instrument beyond any applicable cure period, Lender will have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Instrument in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any such insurance policies.

In any suit to foreclose the lien hereof, there will be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Mortgaged Property and the maintenance of the lien of this Instrument, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Instrument, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding

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or threatened suit or proceeding will be immediately due and payable by Borrower and will be secured by this Instrument.

**APPLICATION OF PROCEEDS OF FORECLOSURE SALE.** The proceeds of any foreclosure sale of the Mortgaged Property will be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Lender may determine in its sole and absolute discretion.

**APPOINTMENT OF RECEIVER.** Upon or at any time after the filing of a complaint to foreclosure this Instrument, the court in which such complaint is filed will, upon petition by Lender, appoint a receiver for the Mortgaged Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the same will be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver will have power to collect the rents, issues and profits of the Mortgaged Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also will have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

**LENDER'S RIGHT OF POSSESSION IN CASE OF DEFAULT.** [Note: Must confirm conformity with Intercreditor Agreement] At any time after an Event of Default has occurred, Borrower must, upon demand of Lender, surrender to Lender possession of the Mortgaged Property. Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Mortgage Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Borrower and its employees, agents or servants therefrom, and Lender may then hold, operate, manage and control the Mortgaged Property, either personally or by its agents. Lender will have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender will have full power to:

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make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as Lender deems are necessary, except Lender may not rebuild any improvements that have been demolished;

insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof; and

receive all of such avails, rents, issues and profits.

**COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.**

If any provision in this Instrument is inconsistent with any provision of the Act, provisions of the Act will take precedence over the provisions of this Instrument, but will not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with the Act.

If any provision of this Instrument grants to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 10 of this Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver will be vested with the powers, rights, and remedies granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 8 or any other Section of this Instrument will be added to the Indebtedness and/or by the judgment of foreclosure.

**INSPECTION.** The Lender will have the right to inspect the Mortgaged Property at all reasonable times and access thereto will be permitted for that purpose.

**RELEASE.**

Lender will release this Instrument and lien thereof by proper instrument upon payment and discharge of all Indebtedness.

Upon Completion of the Renovation of the Theatre, until such time the Note is repaid in full, this Instrument will secure Borrower's obligations with respect to the Note and the Agreement, and this Instrument may not be deemed satisfied and may not be released.

**TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.** Borrower may not, without the prior written consent of Lender, create, effect, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any sale or other conveyance, assignment, transfer, lien, pledge, mortgage,

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security interest or other encumbrance or alienation, including but not limited to the entering into of any contract, sale, installment sale or sale under articles of agreement, the placement or granting of liens or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create an encumbrance, the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of the Lender constitutes a "Prohibited Transfer":

the Mortgaged Property or any part thereof or interest therein; or

all or any portion of the membership or other ownership interest or power of direction in or to Borrower;

in each case whether any such conveyance, sale (installment or otherwise), assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by Borrower or any third party, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 15 does not apply to (i) liens securing the Indebtedness, (ii) the lien of current taxes and assessments not yet due and payable, or (iii) liens or encumbrances specifically permitted by the terms of this Instrument.

**WAIVER OF REDEMPTION RIGHTS.** To the full extent permitted by law, Borrower hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, and hereby voluntarily and knowingly waives, any stay, exemption, redemption, reinstatement, homestead or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof, on his own behalf, on behalf of all parties claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every party acquiring any interest in or title to the Mortgaged Property to the date hereof. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or statute or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will suffer and permit the exercise of every such right, power and remedy as though no such law or statute or other restriction have been or will have been made or enacted. Without limitation of the foregoing, Borrower hereby expressly waives any and all rights or reinstatement and redemption, if any, under any order or decree of foreclosure of this Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such

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rights of reinstatement and redemption of the Borrower and of all other persons are and is deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the Note secured hereby. Borrower hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property will be sold in the event of any sale thereof pursuant hereto.

#### **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower will pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower may not create or permit to exist any other lien or security interest in any of the UCC Collateral.

Unless Borrower gives Notice to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower may not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.

If a default has occurred and is continuing, Lender will have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

THIS INSTRUMENT IS EFFECTIVE AND WILL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN

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THE MORTGAGED PROPERTY AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF LAKE COUNTY, ILLINOIS. THE MAILING ADDRESS OF LENDER AND BORROWER ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT WILL BE SUFFICIENT AS A FINANCING STATEMENT. BORROWER IS THE RECORD OWNER OF THE MORTGAGED PROPERTY.

**REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or the Note or afforded by applicable law, and each is cumulative and may be exercised concurrently, independently, or successively, in any order.

**GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, will be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 19 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

**NOTICE.**

All Notices, demands and other communications ("**Notice**") under or concerning this Instrument must be in writing. Each Notice must be addressed to the intended recipient at its address set forth in this Instrument, and will be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee; (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

Any party to this Instrument may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 20. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 20, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice

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rejected or refused by it will be deemed for purposes of this Section 20 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

Any Notice under the Note and any other Loan Document that does not specify how Notices are to be given must be given in accordance with this Section 20.

**SUCCESSORS AND ASSIGNS BOUND.** This Instrument will bind, and the rights granted by this Instrument will inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 15 will be a default hereunder.

**JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities will be joint and several.

**RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

The relationship between Lender and Borrower is solely that of creditor and debtor, respectively, and nothing contained in this Instrument will create any other relationship between Lender and Borrower.

No creditor of any party to this Instrument and no other person will be a third party beneficiary of this Instrument or any other Loan Document.

**SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument does not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

**CONSTRUCTION.** The captions and headings of the Sections of this Instrument are for convenience only and may be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" may, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation may be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

**SUBROGATION.** [Note: Must confirm conformity with Intercreditor Agreement] If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment

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of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds will be deemed to have been advanced by Lender at Borrower's request, and Lender will automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

**WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

**80 South La Grange, Inc., an Illinois Corporation**

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

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February 5, 2009

EXHIBIT A TO MORTGAGE  
[DESCRIPTION OF THE LAND]

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## EXHIBIT E TO RENOVATION AGREEMENT

### JOINT ESCROW TRUST AGREEMENT FOR LA GRANGE THEATRE RENOVATION ACCOUNT ("Escrow Agreement")

ESCROW TRUST NO.:

DATE: \_\_\_\_\_, 2009

To: *[name of company]*, Escrow Trustee:

#### 1. **Identifications:**

Theatre Owner: 80 South La Grange, Inc., 80 South La Grange Road, La Grange, Illinois 60525

Village: The Village of La Grange, 53 South La Grange Road, La Grange, Illinois 60525

Parties: The Theatre Owner and the Village

Theatre: The La Grange Theatre, 80 South La Grange Road, La Grange, Illinois 60525

Theatre Property: 80 South La Grange Road, La Grange, Illinois 60525

Renovation: The physical improvements to be made to the Theatre pursuant to the Renovation Agreement.

Renovation Agreement: 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 Theater Operation Covenants" and dated February \_\_\_\_\_, 2009.

Renovation Loan: The amount of \$762,500.00 to be made from the Village to the Theatre Owner, under Section 5 of the Renovation Agreement.

#### 2. **Deposits:**

- A. The sum of \$237,500.00 by the Village, representing the purchase price paid by the Village of La Grange for a façade preservation easement over the east façade of La Grange Theatre located on the Subject Property under Section 4 of the Renovation Agreement, which sum is to be used in the Renovation.
- B. The sum of \$650,000.00 to be paid by the Theater Owner under Subsection 7.C of the Renovation Agreement and to be used in the Renovation.
- C. The sum of \$762,500.00 by the Village, representing the proceeds of the Renovation Loan.

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**3. Disbursement of Deposits:**

All of the money deposited into the Escrow Trust under Paragraph 2 of this Escrow Agreement is deposited with the Escrow Trustee to be disbursed by the Escrow Trustee only in one of the following instances as set forth in Subsection 9.L of the Renovation Agreement:

- A. To the Theatre Owner only on the receipt by the Escrow Trustee from the Village of a Certified Distribution Request. The Village must submit with a Certified Distribution Request to the Escrow Trustee documentation establishing that the following conditions precedent have been satisfied:
1. The Theatre Owner has submitted to the Finance Director of the Village an originally executed request for payment ("*Disbursement Request*").
  2. The Disbursement Request includes the following minimum data and documentation, provided on forms supplied by, or otherwise acceptable to, the Finance Director:
    - a. The Theatre Owner's certification of the value of that portion of the Renovation that has been approved by the Village and for which payment is then requested, which value is to be determined pursuant to a schedule showing the value of each component part of such portion of the Renovation, and the quantity of discrete units comprising such component part of the Renovation, in form and with substantiating data and documentation acceptable to the Finance Director (a "*Breakdown Schedule*"). The Breakdown Schedule may not provide for overpayment to the Theatre Owner on component parts of the Renovation to be performed first.
    - b. The Theatre Owner's certification that all prior disbursements have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.
    - c. A Theatre Owner's sworn statement.
    - d. A Theatre Owner's partial or final waiver of lien.
    - e. Sworn statements from each contractor.
    - f. Waivers of lien from contractors, subcontractors, and suppliers.
    - g. Such other receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the Finance Director's satisfaction, (i) the entitlement of the Theatre Owner and others being paid to the disbursement being requested and (ii) prior payment for all labor, equipment, materials, supplies, and other things covered by the Disbursement Request.
- B. In the event of closure of the Renovation Account in accordance with Section 8 of these Instructions, to the Village in an amount equal to the lesser of (i) all funds remaining within the Escrow Trust and (ii) the amount of the Renovation Loan,

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and to the Theatre Owner in an amount equal to any remaining funds. The Village must submit with a Certified Distribution Request to the Escrow Trustee documentation establishing that the Escrow Trust is being closed in accordance with the Renovation Agreement and pursuant to Section 8 of these escrow trust instructions.

In no case shall the above-mentioned deposits be surrendered except on the receipt of a Certified Disbursement Request, upon closure of the Renovation Account, or in obedience to the court order described below.

**4. Billing Instructions:**

Escrow trust fee will be billed as follows:

The parties acknowledge that beginning after a period of one year from the date of this agreement, the Escrow Trustee will impose an administrative maintenance fee (quarterly, semi-annually, or annually) equivalent to the fee set forth on the Company's then current rate schedule.

This fee may be deducted from the outstanding escrow balance or billed to:

\_\_\_\_\_.

PLEASE NOTE: The escrow trust fee for this Escrow Agreement is due and payable within 30 days from the projected disbursement date (which may be amended by joint written direction of the parties hereto). In the event no projected disbursement date is ascertainable, said escrow trust fee is to be billed at acceptance and is due and payable within 30 days from the billing date. The Escrow Trustee, at its sole discretion, may reduce or waive the escrow trust fee for these escrow instructions in the event the funds on deposit herein are transferred to or disbursed in connection with sale escrow trust instructions or an agency closing transaction established at the Escrow Trustee.

Escrow Trust No.: \_\_\_\_\_.

**5. Investment:**

Deposits made pursuant to these escrow trust instructions may be invested on behalf of any party or parties hereto; provided that any direction to Escrow Trustee for such investment shall be expressed in writing and contain the consent of the parties to this escrow, and also provided that Escrow Trustee is in receipt of the taxpayer's identification number and investment forms as required. Escrow Trustee, upon request, will furnish information concerning its procedures and fee schedules for investment.

In the event the Escrow Trustee is requested to invest deposits hereunder, the Escrow Trustee is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of these escrow trust instructions.

**6. Direction Not to Invest/Right to Commingle:**

Except as to deposits of funds for which Escrow Trustee has received express written direction concerning investment or other handling, the parties hereto direct the Escrow

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Trustee NOT to invest any funds deposited by the parties under the terms of this escrow and waive any rights which they may have under Section 2-8 of the Corporate Fiduciary Act (205 ILCS 620/2-8) to receive interest on funds deposited hereunder. In the absence of an authorized direction to invest funds, the parties hereto agree that the Escrow Trustee shall be under no duty to invest or reinvest any such funds at any time held by it hereunder; and, further, that Escrow Trustee may commingle such funds with other deposits or with its own funds in the manner provided for the administration of funds under said Section 2-8 and may use any part or all of such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish Escrow Trustee's obligation to apply the full amount of such funds in accordance with the terms of these escrow instructions.

**7. Compliance With Court Orders:**

The parties hereto authorize and direct the Escrow Trustee to disregard any and all notices, warnings, or demands given or made by the parties (other than jointly) or by any other person. The parties hereto also hereby authorize and direct the Escrow Trustee to accept, comply with, and obey any and all writs, orders, judgments, or decrees entered or issued by any court with or without jurisdiction; and in case the Escrow Trustee obeys or complies with any such writ, order, judgment, or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding any such writ, order, judgment, or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside, or vacated. In case the Escrow Trustee is made a party defendant to any suit or proceedings regarding this Escrow Trust, the parties, for themselves and their heirs, personal representatives, successors, and assigns, jointly and severally, agree to pay to said Escrow Trustee, upon written demand, all costs, attorney's fees, and expenses incurred with respect thereto. The Escrow Trustee shall have a lien on the deposit(s) herein for any and all such costs, fees, and expenses. If said costs, fees, and expenses are not paid, then the Escrow Trustee shall have the right to reimburse itself out of the said deposit(s).

**8. Closure:**

The parties will close this Escrow Trust under the provisions of Subsection 7.G of the Renovation Agreement on the earlier to occur of (a) Completion of the Renovation in accordance with Subsection 9.M of the Renovation Agreement, (b) the date on which any Repayment Event occurs, (c) the date of termination of the Renovation Agreement pursuant to Paragraph 18.C.3 of the Renovation Agreement, or (d) the date on which the Escrow Agent is directed by the Village pursuant to Paragraph 18.C.4.a of the Renovation Agreement to close this Escrow Trust.

**9. Terms of Renovation Agreement Apply if Conflict:**

In the case of any inconsistency or conflict between a provision of this Escrow Agreement and any provision of the Renovation Agreement, or in the case a term of the Renovation Agreement governing any aspect of this Escrow Agreement or the "Renovation Account" as that term is defined in the Renovation Agreement, the provision of the Renovation Agreement will apply and control except only if the parties hereto specifically direct the Escrow Agent otherwise in writing.

10. Execution:

This Escrow Agreement is governed by, and is to be construed under, the laws of the State of Illinois. This Escrow Agreement, and any separate instructions, amendments, or supplemental instructions hereto, may be executed in counterparts, each of which will be deemed an original and all such counterparts together will constitute one and the same instrument.

**Theater Owner:**  
**80 South La Grange, Inc.**

**Village:**  
**Village of La Grange**

By (printed name):

By (printed name):

\_\_\_\_\_

\_\_\_\_\_

Address:

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone:

Telephone:

\_\_\_\_\_

\_\_\_\_\_

Facsimile:

Facsimile:

\_\_\_\_\_

\_\_\_\_\_

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

ACCEPTED: *[name of company]*, as Escrow Trustee

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT F TO RENOVATION AGREEMENT**

**Preliminary Plans for the Renovation  
(by reference)**

**[to be provided by Theatre Owners]**

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## EXHIBIT G TO RENOVATION AGREEMENT

### Required Insurance Coverage

A. Worker's Compensation and Employer's Liability. Prior to commencement of the Renovation, the Owner must procure and deliver to the Village, at the Owner's sole cost and expense, and must maintain in full force and effect at all times during the term of the Renovation Agreement, coverage with limits not less than:

- (1) Worker's Compensation: Statutory.
- (2) Employer's Liability: \$500,000 per occurrence.

Such insurance must clearly indicate that coverage applies in the State of Illinois.

B. Comprehensive General Liability. Prior to commencement of the Renovation, the Owner must procure and deliver to the Village, at the Owner's sole cost and expense, and must maintain in full force and effect at all times during the term of the Agreement, coverage written on an "occurrence" basis and with limits no less than:

- (1) General Aggregate: \$5,000,000.
- (2) Bodily Injury: \$2,000,000.00 per person; \$2,000,000 per occurrence.
- (3) During any period of construction, the Owner must maintain in full force and effect contractor's commercial general liability insurance.

Coverage must include:

- Premises/Operations.
- Products/Completed Operations (to be maintained for two years following Final Payment).
- Independent Contractors.
- Personal Injury (with Employment Exclusion deleted).
- Broad Form Property Damage Endorsement.
- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract).
- Bodily Injury and Property Damage.

“X”, “C”, and “U” exclusions must be deleted.

Railroad exclusions must be deleted if Work Site is within 50 feet of any railroad track.

All employees must be included as insured.

- C. Builders Risk Insurance. Prior to commencement of the Renovation and during the term of the Agreement, Owner must procure, deliver to the Village, and cause to be kept in full force and effect at all times prior to completion of the Renovation (which completion will be evidenced by \_\_\_\_\_), completed-value builders risk insurance, in non-reporting form, against “all risks” of direct physical loss to buildings, structures, equipment, and materials to be used in providing, performing, and completing the Renovation, including without limitation fire extended coverage, vandalism and malicious mischief, sprinkler leakage, flood, earth movement, and collapse, and must be designed for the circumstances that may affect the Renovation. The policy must be written with limits not less than the insurable value of the Renovation at completion. The insurable value includes the total value of work performed and the aggregate value of equipment, supplies and materials furnished for the Renovation. This insurance must include coverage while equipment or materials are in warehouses, during installation, during testing, and after the Renovation is completed. This insurance must include coverage while Owner is occupying all or any part of the Theatre prior to completion of the Renovation, without the need for the insurance company’s consent.
- D. Commercial All Risk Property Insurance. Upon completion of the Renovation (which completion will be evidenced by \_\_\_\_\_), the Owner must procure, deliver to the Village, and cause to be kept in full force and effect at all times during the term of the Agreement, insurance for the Theatre Property providing, at a minimum, commercial all risk property insurance (including without limitation riot and civil commotion, vandalism, malicious mischief, water, fire, burglary and theft), on the Theatre Property and all improvements located thereon in an amount equal to the full replacement value of the Theatre Property, as improved, which means the actual replacement value. Such policy or policies must (i) include coverage extensions for business interruptions/loss of rents, flood and boiler and machinery, (ii) provide that the deductible may not exceed the lesser of \$25,000 or one percent of the face value of the policy, and (iii) contain demolition costs and increased cost of construction endorsements. The actual replacement value may be reasonably determined from time to time by an appraiser or a contractor or engineer in the regular employ of the insurer.
- E. Umbrella Policy. The required coverage may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

- F. Deductible. Each policy must have a deductible or self-insured retention of not more than \$\_\_\_\_\_.
- G. Notice of Cancellation or Amendment. Each policy must contain an affirmative statement by the issuer that it will give written notice to the Village at least 30 days prior to any cancellation or amendment of its policy.
- H. Waiver of Subrogation. All policies must provide waivers of subrogation against the Village.
- I. Issuing Companies. All policies must be issued by a company or companies satisfactory to the Village.
- J. Owner as Additional Insured. Owner must be named as an Additional Insured, as evidenced by a certified copy of the actual Additional Insured endorsement, on all insurance policies listed in this Exhibit F.

The Additional Insured endorsement must identify Owner as follows:

The Village of La Grange and its boards, commissions, committees, authorities, employees, agencies, officers, voluntary associations, and other units operating under the jurisdiction and within the appointment of its budget.

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