AN ORDINANCE AMENDING ORDINANCE 04-033 AND AUTHORIZING AN AMENDMENT TO THE FIVE (5) YEAR LEASE OF THE LOEW’S THEATER, BLOCK 1861, LOT N24, TO THE FRIENDS OF THE LOEW’S INC., A NON-PROFIT CORPORATION, FOR A PUBLIC PURPOSE, WITHOUT PUBLIC BIDDING.

COUNCIL, offered and moved adoption of the following Ordinance:

WHEREAS, Ordinance 04-033, adopted on March 24, 2004, which Ordinance was vetoed by the Mayor on April 1, 2004 and then overridden by Resolution of the Council adopted on April 14, 2004, the City of Jersey City approved a lease of the Loew’s Theater, Block 1863, Lot N24 to the Friends of the Loew’s, Inc.; and

WHEREAS, the lease agreement was never executed and the parties now desire to amend the Ordinance and the lease that was approved thereby; and

WHEREAS, N.J.S.A. 40A:12-14 of the Local Lands and Buildings Law (Law) permits the City of Jersey City to lease property to a non-profit corporation for nominal consideration for a public purpose as defined in N.J.S.A. 40A:12-15(1), subject to certain conditions; and

WHEREAS, Friends of the Loew’s Inc. is a non-profit organization of the State of New Jersey, whose corporate purpose is to provide the following services:

- renovate the Property in accordance with the Construction Code, and operate and maintain the Property as a multi-cultural arts and entertainment center; and

WHEREAS, the Municipal Council finds that such services constitute a public purpose that “promotes the health, safety, morals and general welfare of the community;” and

WHEREAS, it is in the best interests of the City of Jersey City to enter into a lease with Friends of the Loew’s, Inc. for the nominal consideration of one dollar ($1.00) per year for a term of five (5) years and, subject to the mutual consent of the parties, two (2) lease extensions each consisting of five (5) years, for a total maximum term of not more than fifteen (15) years.

NOW, THEREFORE, BE IT ORDAINED, by the Municipal Council of the City of Jersey City that:

A. The Mayor or Business Administrator is authorized to execute a lease with Friends of the Loew’s, Inc., a non-profit corporation, pursuant to N.J.S.A. 40A:12-14 and N.J.S.A. 40A:12-15(1) in substantially the form attached, subject to such modification as the Corporation Counsel or Business Administrator deems appropriate or necessary, which lease must at a minimum, explicitly contain the following terms and conditions of N.J.S.A. 40A:12-14 and N.J.S.A. 40A:12-15, set forth as follows:
1. The property will be used solely for the following public purposes:

   renovate the Property in accordance with the Construction Code, and operate and
   maintain the Property as a multi-cultural arts and entertainment center, as more fully
   described in paragraphs 2 and 3 of the lease.

2. The Property shall not be used for any purpose other than the purpose(s) specified in the
   Lease.

3. The lease shall be for an initial term of five (5) years, commencing on or about the date of
   approval by the Municipal Council, and subject to the mutual consent of the parties, two (2)
   lease extensions each consisting of five (5) years, for a total maximum term of not more than
   fifteen (15) years.

4. The rent shall be one dollar ($1.00) and other good and valuable consideration as described
   in the lease agreement.

5. Friends of the Loew’s, Inc. will submit an annual auditor’s report to the City Clerk and a
   semi-annual report to the Business Administrator stating:

   (a) the names and addresses of the principals of the corporation,

   (b) the use to which the leasehold was put, including the number of persons benefitting
       from the public purpose and whether they reside within or with the City,

   (c) the activities undertaken in furtherance of the public purpose;

   (d) the approximate value or cost of such activities; and

   (e) an affirmation of the continued tax exempt status of the non-profit corporation
       pursuant to state and federal law.

B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

C. This ordinance shall be part of the Jersey City Code as though codified and fully set forth
   therein. The City Clerk shall have this ordinance codified and incorporated in the official
   copies of the Jersey City Code.

D. This ordinance shall take effect at the time and in the manner provided by law.

E. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to
   change any chapter numbers, article numbers and section numbers in the event that the
   codification of this ordinance reveals that there is a conflict between those numbers and the
   existing code, in order to avoid confusion and possible accidental repeaters of existing
   provisions.

NOTE: All material is new; therefore underlining has been omitted.
For purposes of advertising only, new matter is indicated by bold face and
amended matter by italic.
# Ordinance of the City of Jersey City, N.J.

**ORDINANCE NO.** Ord. 04-073

**TITLE:**
An ordinance amending Ord. 04-073 and authorizing an amendment to the five year lease of the Loew's Theater, Block 1863, Lot N24 to the Friends of the Loew's Inc., a non-profit corporation, for a public purpose, without public bidding.

**DATE:**
3.1. OCT 2 7 2004

**RECORD OF COUNCIL VOTE ON INTRODUCTION JUN 2 3 2004**

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**RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING JUN 1 0 2004**

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ALFRED MARK MANE
MAJ. ROY BARACK
CHARLES RESSER
PATRICIA GIBISH

N.V. - Not Voting (Absent)

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**RECORD OF COUNCIL VOTE ON AMENDMENTS IF ANY OCT 2 7 2004**

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**RECORD OF FINAL COUNCIL VOTE JUN 1 0 2004**

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✓ Indicates Vote

N.V. - Not Voting (Absent)

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Adopted on first reading of the Council of Jersey City, N.J. on **JUNE 2 3 2004**
Adopted on second and final reading after hearing on **NOV 1 0 2004**

This is to certify that the foregoing Ordinance was adopted by the Municipal Council and is hereby approved.

\[Signature\]
Robert Simco, City Clerk

\[Signature\]
L. Harvey Smith, Council President/Acting Mayor

Date: **NOV 1 0 2004**

APPROVED:

\[Signature\]

Date: **NOV 1 0 2004**

Date To Mayor: **NOV 1 0 2004**

*Amendment(s):*
LEASE AGREEMENT

It is on the Fifteenth day of October 2004, by and between the City of Jersey City (City), a municipal corporation of the State of New Jersey, with offices at City hall, 280 Grove Street, Jersey City, N.J. 07302 and the Friends of the Loew's, Inc. (FOL), a non-profit corporation of the State of New Jersey with offices at 54 Journal Square, Jersey City, N.J. 07306 as follows:

WITNESSETH

Whereas, it was the citizens group now incorporated as Friends of the Loew's that founded and led the grass roots movement which called for the Loew's Jersey Theatre to be saved from demolition, restored and operated as a non-profit arts and entertainment center; and

Whereas, it was Friends of the Loew's that defined the following goals for the restoration and renewed operation of the Loew's: to help revitalize Journal Square and improve the quality of life in all Jersey City by creating a regional attraction, to provide a source of civic pride and promotion, to increase the visibility and vitality of the arts in our community, to improve the accessibility of the arts and entertainment to our community — especially young people, to use the arts and entertainment to promote better understanding among and between the peoples of our community, to preserve an important landmark in our community, to promote appreciation of the quality and diversity of the American entertainment arts; and

Whereas, the City came to accept and embrace these goals as public purposes, and
Whereas, in furtherance of these goals the City did purchase the Loew’s Jersey Theatre; and, through the Jersey City Economic Development Corporation, expended one million dollars in capital moneys plus another one million dollars from the New Jersey Historic Trust on a program of renovations originally intended merely to stabilize the Loew’s Jersey and make only its Lobby area available for special events; and

Whereas, FOL, under no obligation to do so but acting on its own initiative and commitment to the goals shared with the City, did create a unique program of volunteer labor; and

Whereas, in the course of this program, FOL has raised and expended its own funds to purchase all of the supplies and services it has used; and

Whereas, this volunteer labor was both instrumental in containing cost overruns in the program of renovations funded by the City and Historic Trust moneys and was also the sole means of carrying out additional renovations necessary to make the auditorium functional but for which no funding was available; and

Whereas, FOL has also assumed responsibility for the normal maintenance of the Loew’s Jersey for which there is no other funding; and

Whereas, through its program of volunteer labor, FOL has made the Loew’s Jersey minimally functional; and

Whereas, FOL has created a management structure to operate the Loew’s which includes professional theatre technicians, graphic artists, information technicians, accountants and the like which are necessary to the operation of an arts center; and
Whereas, despite the need for additional renovations to the Loew’s Jersey, FOL has already utilized the Theatre to attract people to Journal Square from throughout the Metropolitan Area; and

Whereas, the current arrangements limit FOL’s ability to build on past progress; and

Whereas, expanded operations of the Loew’s Jersey will immediately require that the Theatre be brought into compliance with relevant building and fire codes; and

Whereas, both the City and FOL are greatly desirous of expanding use of the Loew’s Jersey as an arts center and of carrying out further renovations to the Theatre;

Now therefore, in consideration of the covenants and conditions hereinafter set forth, and for the other good and valuable consideration, the City and FOL do hereby mutually agree as follows:

1. The Property

The City does hereby lease to FOL, and FOL does hereby take from the City the property and improvements described as Block 1863, Lot N24, more commonly known by the street address of 51A -54 Journal Square, including the land and improvements, all of which is more particularly described in Attachment D hereto, and is familiarly called the Loew’s Jersey Theatre (the Loew’s, Theatre, Leased Premises or Premises), subject to those covenants, restrictions and title restrictions of record and the terms and conditions of this Agreement.

2. Rent

FOL agrees to pay to the City the sum of One Dollar ($1.00) per year during the term of this lease, yearly in advance.
This is a net lease. No abatement, diminution or reduction of the basic rent, or of any additional rent or other charges required to be paid by FOL pursuant to the terms of this Agreement, shall be claimed by, or allowed to, FOL for any inconvenience, interruption, cessation or loss of business or otherwise, caused directly or indirectly by any present or future laws, ordinances, orders, rules, regulations or requirements of any federal, state, county or municipal governments, or by priorities, rationing or curtailment of labor or material, or by war, civil commotion, strikes or riots, or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the City, including without limitation, casualty to the Theatre, nor shall this Agreement in any way be affected by such causes, except as expressly provided in this Agreement.

3. Term

The initial term of this Agreement shall be sixty three (63) months from the date of execution.

4. Joint Goals

The City and FOL hereby acknowledge the following as among the joint goals and public purposes for the further renovation and operation of the Theatre as a multi-use cultural arts, entertainment and meeting center:

- to help revitalize Journal Square and improve the quality of life in all Jersey City by creating a regional attraction
- to provide a source of civic pride and promotion
- to increase the visibility and vitality of the arts in our community
- to improve the accessibility of the arts and entertainment to our community especially young people
- to use the arts and entertainment to promote better understanding among and between the peoples of our community
- to preserve an important landmark in our community
- to promote appreciation of the quality and diversity of the American entertainment arts
5. Use

FOL covenants and agrees to use and occupy the Theatre for the purpose of constructing, reconstructing, renovating, restoring, operating and maintaining it as a multi-use cultural arts, entertainment, meeting and banquet center. The Theatre will host, present or produce stage and film programming, meetings, seminars and other gatherings, will exhibit works of fine art and conduct such ancillary activities as the Board of FOL determines are necessary for or supportive of the purposes of the Theatre and are compatible with the goals described in Section 4. herein. These uses may include events created and/or sponsored in whole or in part by FOL as well as events by third-parties using the Theatre under terms and conditions established by the Board of FOL. FOL shall not use or permit the Theatre to be used or occupied for dangerous, noxious or offensive trade or business or permit the presence of any toxic substance or for any unlawful purpose. FOL shall not use or permit the Theatre to be used or occupied in a manner which would in any way constitute a public nuisance or violate any certificate of occupancy affecting the Theatre.

The Theater is to be a forum featuring diverse events, promoting vigorous and free public expression. FOL will exercise viewpoint neutrality in conformity with The First Amendment of the United States Constitution. Program decisions shall be based on artistic concerns, technical and operational concerns and requirements as well as marketing and utilization targets. The fact that FOL is a non profit entity in no way prevents it from booking and otherwise contracting with for profit entities for performances and presentations.

6. City Representation On FOL's Board
Within ninety (90) days of the execution of this Agreement, FOL shall amend its bylaws to allow for inclusion on its Board of Trustees of two representatives of and selected by the Mayor of Jersey City and two members of and selected by the Municipal Council of Jersey City, one of whom shall be a Councilperson At Large. The terms on the Board of Trustees of FOL of these four members shall be concurrent with the terms of office of the Mayor and Municipal Council.

7. **Management By FOL**

FOL shall have full and exclusive authority in the management of and planning for the Theatre and its operation, subject to the terms and conditions of this Agreement. This authority shall include, but not be limited to:

- Solicit, review, select, negotiate and contract all bookings for self or co-presented and/or produced acts;
- Establish, amend and enforce the terms and conditions governing third party use of the Theatre, solicit, review, accept or reject proposals for such use and establish and collect all fees for such use;
- Establish and enforce general regulations for the efficient and safe operation of the Theatre;
- Establish and administer budgets;
- Manage personnel matters, including hiring and firing;
- Solicit and contract with vendors;
- Solicit and keep donations, grants, sponsorships and the like for specific programs, capital improvements and general operation.

8. **Show Contracts, Expenses, Etc.**
The City shall not be made a party to any contracts with producers, promoters, entertainers and other sources of shows for presentation at the Theatre, nor shall the City be liable for any deposits, guarantees, percentages, artists’ fees, or payments arising from such contracts, except in the case of City Sponsored Events as defined in Section 19. herein.

9. Development

FOL shall undertake development activities in support of the purposes of the Theatre, and have sole authority to define, establish and pursue fundraising campaigns. This may include “naming” opportunities, in which a name of a donor or sponsor is attached to and associated with a room, area, element, fixture or entirety of the Theatre or its exterior. The City agrees to recognize and maintain any and all such attachments of names to a given area or fixture within or upon the Theatre for a minimum of twenty-five years from the time of the attachment whether or not extensions of this Agreement are executed as described elsewhere in this Agreement. Within ninety (90) days of the execution of this Agreement, FOL shall begin a “seat naming” fund raising campaign, and shall undertake additional fundraising activities as soon as is practicable.

10. Collection of Rent, Other Fees, Admissions, Donations and Operating Grants

FOL shall have the authority to collect, keep and expend all rents, other fees, admissions, donations, grants and all other income, earned and contributed, arising from or pursuant to the operation of the Theatre, provided said collection, keeping and expenditure is in accordance with any and all laws and regulations of the State of New Jersey and/or Internal Revenue Service governing income and expenditures for 501 (c) 3 (non-profit, tax exempt) corporations and supportive of the purposes of the Theatre, and
all other applicable federal, state and local laws and regulations governing this agreement and the activities hereunder

11. Solicitation and Collection of Capital Grants and Donations

FOL shall have the authority to solicit, collect, keep and expend donations and grants for the purposes of making capital improvements, provided said solicitation, collection, keeping and expenditure is in accordance with any and all laws and regulations of the State of New Jersey and/or Internal Revenue Service governing income and expenditures for 501 (c) 3 (non-profit, tax exempt) corporations, in accordance with other relevant sections of this agreement, and supportive of the purposes of the Theatre, and all other applicable federal, state and local laws and regulations governing this agreement and the activities hereunder

12. Compliance With Laws

FOL shall promptly comply or cause compliance with all laws, ordinances, orders, rules, regulations and requirements of federal, state, county and municipal governments applicable to FOL’s use of the Theatre, both foreseen and unforeseen, ordinary and extraordinary, and whether or not the same shall presently be within the contemplation of the parties hereto or shall involve any change in governmental policy, at no expense to the City except for the City’s obligations hereunder, including Sections 13. and 20., and prior to provision to FOL of the funds described in Sections 13. and 14.

13. Financial

(a) Immediate application for UEZ funds for Phase 1(a) Construction

Within ninety (90) days of the execution of this Agreement, FOL shall prepare an
application on behalf of the City for submission to the New Jersey Urban Enterprise Zone Authority for a non-recourse loan in an amount equal to the total estimated cost of Phase 1(a) Construction, as shown in Attachment A, plus a construction and design contingency of up to 12.5% of that total. The City shall give all due support to this application, and upon approval by the UEZ Authority, ensure said UEZ funding is made available to FOL.

(b) Yearly application for UEZ funds as working capital

In each year of the initial term of this Agreement, FOL shall prepare an application on behalf of the City for submission to the New Jersey Urban Enterprise Zone Authority for a non-recourse loan of working capital to support and assist FOL’s operation in furtherance of the purposes of the Theatre. The City shall give all due support to said applications, and upon approval by the UEZ Authority, ensure said UEZ funding is made available to FOL. The total amount sought from the UEZ Authority for working capital shall not exceed $500,000 in the initial term of this Agreement, unless with the consent of the City.

(c) Application for UEZ funds for master planning

During the initial term of this Agreement, FOL shall prepare an application on Behalf of the City for submission to the New Jersey Urban Enterprise Authority for a non-recourse loan to fund a master planning process with assistance from professional consultants having expertise in non-profit development, theatrical operations and/or fundraising as selected by FOL’s board of trustees. Any committee(s) appointed by the board to select or work with said consultants shall include one of the Mayor’s representatives and one of the City Council’s representatives on FOL’s board. The City shall give all due support to this application, and upon approval by the UEZ Authority,
ensure said UEZ funding is made available to FOL. The total amount sought from the UEZ Authority for master planning work shall not exceed $150,000, unless with the consent of the City.

This master planning process shall result in an initial report no later than twenty four months after funding for the planning is provided. A copy of this initial report shall be provided to the City. A final plan shall be prepared no later than fifty two months after execution of this Agreement, contingent upon provision of the requisite funding. This plan shall contain specific recommendations and strategies to increase fundraising and to further expanded operations and increase both earned income and donations, and contain specific objectives for an extended five year term of this Agreement. This plan shall also project a timetable to undertake unaccomplished work items from Attachment B, Phase 2 Additional Construction, herein. Said plan shall also review options for expanded arts management/partnering/collaboration by or with FOL, including but not limited to a school for the performing arts, apprenticeships in stage operations and management, a children’s museum, a museum of theatre history. A copy of this plan shall be provided to the City.

(d) Alternative For City To Cause To Be Performed Portions Of The Work

Upon the written consent of the two parties to this Agreement, and provided FOL’s occupancy and control of the Theatre is not significantly impinged nor other construction schedules disrupted, the City may directly contract for and cause to be carried out work items of Phase 1(a) Construction.

14. Alternative Sources Of Funding
In the event that said application for a non-recourse loan is not approved by the UEZ Authority, or otherwise at the City’s discretion, the City will assist FOL in finding the funding contemplated in this section through sources other than UEZ funding. This funding sources may include but not be limited to Community Development Block Grant funds, Capital Improvement Funding, and the future current fund budgets. However, no appropriation for funding will be included in the July 2004 – July 2005 operating budget.

15. Repayment Through Ticket Surcharge

FOL agrees all that UEZ funding provided under Sections 13. and 14. above shall be in the form of a non-recourse loan to FOL, repayable to the City’s UEZ account through the proceeds of a per-patron surcharge. FOL agrees that funding provided under Sections 13. and 14. above from sources other than UEZ may similarly be in the form of a non-recourse loan to FOL, repayable to the City through the proceeds of the per-patron surcharge.

FOL will impose a $0.75 per patron surcharge on any event with an audience held in the Theatre whether produced/presented in whole or in part by FOL or presented by a third party and regardless if admission is charged for that event or not, except for events without an admission charge that are produced/presented by FOL, the City, Jersey City Board of Education, County of Hudson, State of New Jersey, or incorporated non-profits with a primary purpose of providing primary, secondary or higher education or providing services to senior citizens. Banquettes, weddings, corporate gatherings and other functions held in the Lobby of the Theatre shall be uniformly accessed this surcharge at $100 per event.
The proceeds of this surcharge shall be deposited by FOL into a specific, interest bearing sub-fund known as "Loew's Attendance Surcharge Fund".

As part of its annual audited report to the City, FOL will inform the City in writing of the amount deposited during the past year in the sub-fund known as the "Loew's Attendance Surcharge Fund" and will certify the value of the "Surcharge Equivalent Value" earned during the past year. The City will credit FOL with repayment of the total of funds provided to FOL under Sections 13. and 14. of this Agreement in an amount equal to the combined total of said yearly deposits to the "Loew's Attendance Surcharge Fund" and yearly value of the "Surcharge Equivalent Value".

Whenever the "Loew's Attendance Surcharge Fund" shall have a value on account of over $250,000 at the close of FOL's fiscal year, the City shall determine the use of said overage. Within fifteen (15) days of submission of its annual audited report to the City, FOL will separately write to the City and request disposition of that portion, if any, of the "Loew's Attendance Surcharge Fund" in excess of $250,000. The City shall reply within ninety days of said request as to whether or not it wishes to receive payment from the "Loew's Attendance Surcharge Fund" or, alternatively, directs FOL to utilize some or all of said funds for operations of the Theatre as suggested by FOL or the City. In the event that the City fails to respond in ninety days, FOL shall forward the amount in the "Loew's Attendance Surcharge Fund" in excess of $250,000 to the City. In all cases, the amount annually deposited into the "Loew's Attendance Surcharge Fund" shall be credited as re-payment by FOL of the funds provided under Sections 13. and 14. of this Agreement.

16. Funding For Phase 1(b) Construction
FOL shall make application to the County of Hudson and other funding sources for funding in an amount equal to the balance of costs for Phase 1(b) Construction, as attached here to.

17. Construction Timetable

Upon provision to FOL of the funding described herein in Sections 13., and 14., and conditioned upon the prompt payment of FOL's requests for payment of said funds, FOL shall commence and diligently pursue the work described in Phase 1(a) Construction as attached hereto, to the value of the funding provided, and shall cause said work to be substantially complete within twenty four months after provision of said funding.

Upon provision to FOL of the funding described herein in Sections 13., 14 and 16., and conditioned upon the prompt payment of FOL's requests for payment of said funds, FOL shall commence and diligently pursue the work described in Phase 1(b) as attached hereto, and shall cause said work to be substantially complete within twenty four months after provision of said funding.

FOL shall make a good faith effort to complete work sufficient to allow use of the balcony of the Theatre on a special-event basis fourteen months from the time that the funding described in Sections 13. and 14. herein is provided.

This timetable for construction and substantial completion of the work described in Phase 1(a) and Phase 1(b) Construction, as attached hereto, is subject to provision to FOL of requisite funding as contemplated in this Agreement, issuance all necessary permits, which permits FOL agrees to apply for promptly and to diligently continue to process, prompt processing and payment by the City, City's UEZ management authority,
or other sources of funding for the work described in Attachment A, Phase 1(a) and Phase 1(b) Construction, of all payment/reimbursement requests and vouchers from FOL arising under the terms of this Agreement and any delay occasioned by Force Majeure causes as defined in Section 38 of this Agreement.

FOL represents, warrants and covenants as follows:

(1) All construction work shall be done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, codes, rules, regulations and requirements, and in accordance with the standards, if any, of the Board of Fire Underwriters, or other organizations exercising the functions of a Board of Fire Underwriters whose jurisdiction includes the Leased Premises;

(2) FOL shall apply or cause to be applied for all required governmental permits and authorizations for construction;

(3) All work shall be planned and carried out in accordance with requirements, if any, of the Historic Preservation Easement held by the New Jersey Historic Trust and attached hereto as Attachment C.

(4) All materials and workmanship shall be of good quality, and upon completion of construction, the improvements will be structurally safe and sound, and all parts thereof and all mechanical equipment therein and all utilities serving all of the Theatre will be in good and working order and will have been properly installed, tested, and paid for, and in case of repairs, restoration, changes, additions, alterations, or improvements, shall be at least equal to the original;

(5) Any work shall be done as promptly as possible and practicable under the existing circumstances;

(6) FOL shall cause the contractor(s) or construction manager to provide the amounts of liability coverage specified in Section 34, including but not limited to, builder’s risk insurance;

(7) FOL shall cause its construction contractors to carry worker’s compensation insurance requires by law.
(8) FOL shall follow public bidding rules and requirements if required to do so by the funding source, or otherwise required by law.

Because of its interest in the Theatre, the City shall waive construction permit and related fees for the work contemplated in this Agreement.

18. Additional Construction

The parties hereto acknowledge the need or desirability to carry out other repairs and upgrades to the Theatre in addition to those described in Attachment A, Phase One Construction.

FOL shall plan, seek funding for and, as funding permits, carry out the additional repairs and upgrades listed in Attachment B, Additional Construction, at its sole cost and expense.

Additionally, FOL may, at its sole cost and expense, plan and carry out other improvements and upgrades which the Board of FOL subsequently determines are necessary or desirable for the purposes of the Theatre, provided that FOL shall first affirm to the City that funding to cover the estimated cost of the work has been received by or pledged to FOL, and further provided that FOL has first received the written consent of the City for work the cost of which is estimated to be in excess of $100,000, which consent shall not be unreasonably withheld.

When carrying out or causing to be carried out alterations, renovations and upgrades pursuant to this Section, FOL shall conform to the representations and covenants regarding building codes, permits, Historic Preservation Easement, quality of workmanship, contractors' insurance, etc., enumerated here in.
Alterations, renovations and upgrades to the Theatre shall, at the option of the City, become the property of the City and shall remain and be surrendered with the Theatre as a part thereof at the termination of this Agreement without any compensation to FOL or to anyone else. This does not, however, include furniture, trade fixtures, movable machinery and equipment, stage equipment and all personality of FOL purchased with funds other than those provided under Sections 13. and 14. herein or otherwise obtained through public or joint or cooperative grant funds, which shall remain the property of FOL and, at FOL's option, be removed from the Theater by FOL at the termination of this Agreement. FOL shall include as extensive a list as practical of its property in its annual audit.

19. City Sponsored Events

For the purposes of this Agreement, a City Sponsored Event shall be a show or other program where the primary beneficiaries are the public community of Jersey City, i.e., senior citizens, youth, etc. In every whole year following the substantial completion of the work items listed in Attachment A, Phase One Construction, hereto, the City will be entitled to twenty four dates per year (no more than three in any given month) for "City Sponsored Shows". The Theatre will be available to the City on any day of the week for eight of the dates per year and on Sundays through Wednesdays for the remaining dates, provided no date requested by the City is already on hold or has been previously booked for another event, or has been previously scheduled for maintenance or other related work in the Theatre. FOL and the City shall mutually agree on the minimum advance notice that the City must give FOL of the City's desire to book a given
date sufficient to allow FOL to make all necessary arrangements, including but not limited to house and stage crews.

All City Sponsored Shows shall be presented in accordance with the operating procedures and policies established by FOL for use of the Theatre by third parties. City Sponsored Shows shall require that young people below the age of 18 be accompanied by parent or guardian or shall be staged in cooperation with an established Jersey City youth organization or program, such as a school, the Boys & Girls Club, etc., that shall provide supervision in accordance with the requirements of FOL.

The City shall not be required to pay any rent for use of the Theatre for City Sponsored Show dates; however, the City shall pay FOL for any and all direct expenses and costs of FOL stemming from such use of the Theatre by the City including, but not limited to, expenses associated with provision of house, stage and security crews, equipment rental, vendor services, printing, and expendables consumption.

Any and all City Sponsored Shows held at the Loew's in a given year shall be counted toward the minimum yearly average number of performances and/or attendance required of FOL in Section 48 of this Agreement.

20. **Repairs, Maintenance and Compliance**

**FOL's Responsibilities:**

Upon receipt of funding as described in Sections 13 and 14 herein, FOL shall:

Promptly comply with all laws, orders, rules, and requirements of governmental authorities, insurance carriers, board of fire underwriters or similar groups, except as may be otherwise provided for herein;
Maintain the Theatre and all equipment and fixtures in it in good repair and appearance, subject to the condition of the Theatre at the time FOL entered into this Agreement and to Sections 13. and 16. herein regarding renovations which will change the Theatre’s condition;

Make all necessary routine repairs to, and regular maintenance of the Theatre and all equipment and fixtures therein, except as otherwise noted herein.

Maintain the Theatre in a neat, clean, safe and sanitary condition, free of all garbage,

Keep the sidewalk and entrances clean and free from trash, debris, snow and ice;

Use all electric, plumbing and other facilities in the Theatre safely;

Do nothing to destroy, deface, damage or remove any part of the Theatre, except as may be necessary to carry out repairs as contemplated in this Section or construction as contemplated in Sections 13, 16 and 18;

Promptly notify the City in writing of the need for repairs or replacements that are the City’s responsibility.

FOL shall comply with the above at its own cost and expense throughout the term of this Agreement, provided FOL has received the funding contemplated in Sections 13. and 14, herein.

The City’s Responsibilities:

The City agrees to undertake routine maintenance of the facility, including, but not limited to:

1) Maintain and make repairs/replacements to the roof, roof drains, exterior walls and sidewalks;
2) Make all structural repairs;

3) After the completion of Phase 1(a) Construction as contemplated herein, make extraordinary repairs to and necessary replacements of the heating, air handling, sewer ejection and fire suppression systems, water, electric and sewer services and major components thereof, subject to any and all warrantees, if any. After the completion of Phase 1(b) Construction as contemplated herein, make extraordinary repairs to and necessary replacements of the cooling system and major components thereof, subject to any and all warrantees, if any.

Prior to provision to FOL of the funding described in Sections 13. and 14. herein, perform repairs and maintenance necessary to maintain and renew the temporary certificate of occupancy for the Theatre.

In the event that the Theatre be so damaged by fire or other casualty as to become untenantable, and provided the City has been immediately notified by FOL of said event then in such event this Agreement shall continue in full force and effect, and the City shall, within ninety (90) days of the date of such fire or casualty, or such longer period as shall be mutually reasonably agreed upon by the parties hereto, cause the Theatre to be restored and repaired to tenantable conditions and in accordance with applicable historic preservation requirements, unless the City and FOL upon consultation with the architect of record for the Theatre as designated by FOL and with historic preservation officials of the State of New Jersey mutually determine that damage to the Theatre is so extensive as to render it not feasible to restore and repair, subject to available funding.
If a portion of the Theatre shall be only slightly damaged by fire, the elements or other casualty so as not to render the same untenantable and unfit for occupancy, then the City shall cause repair of the same with all reasonable promptitude, subject to available funding.

The City agrees that it will apply the proceeds from any insurance required in this Agreement, or if the City self insures, appropriate and apply the necessary City funds to the cost of restoration and repair of the Theatre, subject to available funding.

In the case of repair and replacement work that must be carried out in accordance with the New Jersey Historic Trust's existing easement on the Theatre, or under the control of any historic preservation regulations of the State of New Jersey or Federal Government which are applicable to the Theatre, including but not limited to repair of the exterior walls the City shall employ the preservation architect of record for the Theatre as designated by FOL, to the extent permissible by law.

21. Volunteers

As a means of controlling costs, and also to perpetuate and extend the benefits of community involvement, civic spirit and volunteerism, FOL shall maintain a program of recruiting and maintaining a corps of volunteers to assist in the administration, operation and maintenance of the Theatre.

22. Utilities

The City shall maintain in its name and pay all utility, meter and service charges, excluding telephone, applicable to the Theatre.

23. Indemnification
FOL covenants and agrees, at its sole cost and expense, to indemnify the City and save the City harmless against and from any and all claims by or on behalf of any person, firm or corporation, arising from the use, conduct or management of, or from any work or thing whatsoever done in or about the Theatre, during the term of this Agreement by FOL, its agents, servants, employees, licensees, invitees or independent contractors acting on its behalf, and further to indemnify the City and save the City harmless against and from any and all claims from breach or default on the part of FOL in the performance of any covenant or agreement on the part of FOL to be performed, pursuant to the terms of this Agreement, or resulting or arising from any act or negligence of FOL, or any of its agents, servants, employees, licensees, invitees or independent contractors acting on its behalf. FOL, upon notice from the City, covenants to resist or defend such action or proceeding, provided, however, that FOL shall have no obligation to the City under this Section with respect to claims, injuries or damages arising out of the City’s acts or the City’s negligence or the acts or negligence of the City’s agents, servants, employees, licensees, invitees or independent contractors acting on behalf of the City.

24. Insurance

The City shall protect against the perils of fire and lightening, and the perils of vandalism and malicious mischief either through provision of property insurance with the standard extended coverages or through self insurance, subject to the provision of Paragraph 20 herein.

In addition to the indemnification provided for in Section 23. of this Agreement, FOL shall maintain comprehensive general liability insurance, naming the City as an additionally insured, in the following amounts:
General Aggregate Limit: $2,000,000
Products/Completed Operations Aggregate Limit: $2,000,000
Personal And Advertising Injury Limit: $1,000,000
Each Occurrence Limit: $500,000
Fire Damage Limit: $100,000
Medical Expense Limit: $5,000

FOL shall maintain worker’s compensation insurance in accordance with the requirements of the laws of this State.

All policies of insurance referred to in this Section shall be written by companies approved or authorized to do business in the State of New Jersey. Upon the execution of this Agreement and provisions of funds described in Section 14, and thereafter not less than thirty days prior to the expiration dates of the expiring policies furnished to this Section, FOL shall furnish the City with satisfactory proof of the payment of premiums, and all policies of insurance carried or maintained hereunder shall contain an agreement by the insurer that each such policy shall not be cancelled without at least thirty days prior written notice to the City, together with a certificate of insurance for all policies naming the City as an additionally insured. Upon FOL’s failure to comply with this provision, the City shall have the immediate right to:

(a) Obtain the aforesaid insurance coverage,
(b) Pay the premiums therefor,
(c) Bill FOL, which amount shall be deemed additional rent and shall be paid with the next installment of rent due the City by FOL.

FOL and the City shall cause any insurance policy carried respectively by it in accordance with this Section to be written in such a manner as to provide that the insurer waives all right of recovery by way of subrogation against the City or FOL in connection with any loss, including but not limited to worker’s compensation insurance. Neither
party hereto shall be liable to the other for any loss or damage covered by the insurance policies maintained by the other party.

It is expressly understood and agreed that the City shall not be responsible for, or for insuring any equipment or personality of FOL or FOL's employees, invitees, guests, contractors, vendors or Theatre users, except for reasons arising from the acts, omissions or negligence of the City.

25. Assignments

FOL shall not assign its obligations under this Agreement without the prior written consent of the City, which consent shall be based on and conditioned upon the continued use of the Theatre for the purposes of the Theatre as herein defined. However, it is understood and agreed by the parties hereto that the Theatre will be used as a multi-use cultural arts, entertainment, meeting and banquet center and that FOL will therefore in ordinary usage and typical business practices rent the Theatre to, or enter into co-promotional or co-production agreements with various artistic and/or civic groups, producers, promoters, corporations, individuals, etc. for brief or extended bookings, may enter into resident company agreements, and may enter into co-promotional or similar agreements that allow for capital investment by third parties in exchange for guarantees to said parties of extended periods of access to and use of Theatre facilities, subject to all applicable laws. It is further understood and agreed that such usage and typical business practices shall not constitute an assignment by FOL.

Nothing herein shall be construed to prevent FOL from entering into contracts with third parties to provide services necessary or desirable to the operation of the
Theatre, including, but not limited to, booking agents, food concessionaires, cleaning and
maintenance services, etc., subject to all applicable laws.

For the purposes of this Agreement, a booking or similar arrangement that is
common business practice in the entertainment / theater management business shall not
be considered an Assignment.

26. **Extended Block Booking**

The parties hereto acknowledge that FOL may determine that the purposes of the
Theatre may be furthered by entering into contracts for block booking or co-presentation
agreements with third party producers/promoters may not extend beyond the term of this
agreement

(i) Said contracts or agreements are supportive of the purposes of the Theatre.

(ii) Under no circumstances shall the City or any future tenant of the City be
required to pay any fees, operating expenses, reimbursements, or the like to third-party
entity except as may be directly derived from net proceeds, if any, of programs presented
by or with the producers/promoter in accordance with the said contracts.

(iii) The City receives certificates of insurance from said third-party entity
evidencing relevant coverage as required of FOL in Section 24. herein.

(iv) Any permissible third party entity accept in writing FOL's obligations to
the City herein under pursuant to indemnification, compliance with laws, governing law,
non-liability of the City, and waist and transmit said acceptance to the City.

(v) Said contract with third-party entity shall be non-transferable or assignable.
(vi) The third-party entity provide the City with financial statements describing all of said entity’s activities in the Theatre, which financial statements shall be audited by a certified public account.

(viii) The total number of days for which the Theatre is booked under or by all such extended booking contracts in any year beyond the last year of the term of this Agreement in effect at the time of execution of such an extended booking contract shall not equal more than two-thirds of a year.

(ix) FOL shall have transmitted copies of such contracts upon execution to the City.

27. Condemnation

If the Theatre, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement among the City and FOL (any such matters being hereinafter referred to as a “taking”), the City, FOL and any person or entity having an interest in the award or awards shall have the right to participate in any such condemnation proceedings or agreement for the purpose of protecting their interest thereunder. Each party so participating shall pay its own expenses therein.

If at any time during the term of this Agreement there shall be a taking of the whole or substantially all of the Theatre, this Agreement shall terminate and expire on the date of such taking and the rent and additional rent hereunder shall be apportioned and paid to the date of such taking. For the purpose of this Section, “substantially all of the theatre” shall be deemed to have been taken if the untaken part of the Theatre shall be insufficient for the economic and feasible operation thereof by FOL.
28. Easements, Reservations, Etc. Of Record

The parties hereto agree and recognize that the City has executed an easement in favor of the New Jersey Historic Trust for the purpose of insuring that Theatre shall be maintained in the manner provided therein.

The City and FOL further recognize and agree that from time to time other sources of funding may require certain reservations and easements dealing with the renovation and maintenance of the Theatre. The City agrees to review any other proposed reservations, easements or covenants submitted by FOL as necessitated by any agency, group, trust or funding source and to not unreasonably reject or ignore said proposed reservations, easements or covenants.

29. Historic Register

FOL acknowledges that the Theatre is listed on the New Jersey Register of Historic Places, and agrees to accept and abide by the requirements and regulations set forth for such properties by the State of New Jersey.

30. Tax Compliance

FOL shall not enter into any contracts or agreements to perform any act which may adversely affect the exclusion of interest, pursuant to the Internal Revenue Code, as amended, from gross income for federal income tax purposes on any bonds or notes issued by the City to finance the rehabilitation of the Theatre of any portion thereof, and other purposes for which such bonds are issued.

31. Quiet Enjoyment

FOL, upon paying the basic rent and all additional rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this
Agreement on its part to be kept, shall quietly have and enjoy the Theatre during the term of this Agreement without hindrance or molestation by anyone claiming by, through or under the City as such, subject, however, to the exceptions, reservations and conditions of this Agreement.

32. **No Oral Modification**

All prior understandings and agreements between the parties are merged within this Agreement, which alone fully and completely sets forth the understanding of the parties; and this Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the party against whom the enforcement of the change or termination is sought.

Covenants to Bind and Benefit Respective Parties

The covenants and agreements herein contained shall bind and inure to the benefit of the City, its successors and assigns, and FOL, its successors and assigns.

33. **Mechanic's Liens**

The parties hereto agree that the City shall not be at any time liable or responsible for the cost, in whole or in part, of any alteration or improvement or other work, labor or materials performed by FOL or its agents of any kind or nature whatsoever, whether or not such work, labor or materials are required of FOL pursuant to the provisions hereof in connection with or upon the Theatre.

FOL agrees that in the event any contractor or subcontractor or materialman or laborer or any person whatsoever shall seek to impose a lien on the land or any part thereof for work performed by, for or on behalf of FOL, by the service of or filing of a notice of any nature or kind whatsoever as may be contemplated in the provisions of the
laws of the State of New Jersey, or in the event any such contractor, subcontractor, materialman or laborer shall, under the laws of New Jersey, file a stop notice relating to work or labor some or material supplied at, to or for the Theatre, FOL shall forthwith proceed at its own cost and expense to obtain an effective cancellation or discharge of such lien, notice and/or stop notice in writing in form which will be accepted for filing by the appropriate authorities in Hudson County, New Jersey. If FOL shall be unable to procure such effective cancellation or discharge within ninety days following the filing of any such lien or notice, the City shall have the right to take such steps and pay such monies as may be necessary to obtain an effective cancellation or discharge of such lien, notice and/or stop notice in which event such monies as shall be expended by the City, together with interest thereon at the highest rate then permitted by the laws of the State of New Jersey shall then be considered additional rent hereunder and shall be due and payable on demand by the City.

34. **No Waiver**

The failure of the City or FOL to insist in any one or more cases upon the strict performance of any or the terms, covenants, conditions or provisions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of any such term, condition, provision or option.

35. **Amendment**

This Agreement shall not be cancelled, amended or changed except as agreed to in writing by FOL and the City.

36. **Non-Liability of the City**
The City shall not be liable for any damage or injury which may be sustained by FOL or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, sewer, waste or the like to the electrical or other utility failure resulting from the carelessness, neglect or improper conduct of the part of FOL or its agents, invitees or guests or by reason of any acts beyond the control of the City.

37. **Waste**

FOL shall not do or suffer any waste or damage, disfigurement or injury to the Theatre or any part thereof, but this shall not be deemed to prevent demolition, alterations, additions and improvements pursuant to other provisions of this Agreement.

38. **Force Majeure**

The period of time during which the City or FOL is prevented from performing any act required to be performed under this Agreement by reason of fire, catastrophe, strikes, lockouts, civil commotion, acts of God or the public enemy, government prohibitions or preemptions, embargoes, inability to obtain material or labor by reason of governmental regulations or prohibitions, the act of default of the other party or other events beyond the reasonable control of the City or FOL, as the case may be, shall be added to the time for performance of the act.

39. **Notices**

All notices required to be given to any party to this agreement shall be sent by certified mail, return receipt requested, or by over-night delivery service offering proof of deliver, to the parties at the addresses set forth at page one of this Agreement or to such other addresses as may be indicated in writing by the parties.

40. **Successors and Assigns**
This agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

41. Non-Discrimination

FOL shall not discriminate with regard to the employment of any person or the use of the Theatre in violation of any Federal or New Jersey law against discrimination.

FOL will not discriminate and will prohibit its agents, contractors, etc. from discriminating any employee or applicant for employment because of age, ancestry, color, creed, national origin, race, religion, marital status, mental or physical disability or sex or sexual orientation.

FOL will post in conspicuous places, available to employees and applicant for employment, notices setting forth the provisions of this nondiscrimination clause.

FOL will in all solicitations or advertisements for employment or contracts state that qualified applicants will receive consideration for employment without regard to age, ancestry, color, creed, national origin, race, religion, marital status, mental or physical disability or sex or sexual orientation.

42. Consent To Applications

At FOL’s request, the City shall join in or consent to the filing of any applications for any necessary federal, state, county, municipal or other regulatory body approvals to carry out the purposes and intent of this Agreement. The consent to the filing shall not be deemed approval on the merits of such applications.

43. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
44. Severability

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

45. Continued Existence of FOL

FOL covenants that it is a non-profit corporation organized under the laws of the State of New Jersey. FOL agrees that under the term of this Agreement, it shall be and remain an active non-profit corporation whose purpose shall be the planning and development for, and operation, management and maintenance of the Theatre as a multi-use cultural arts, entertainment and meeting center and if FOL materially restructures it will so advise the City.

46. City Cooperation

The City shall not unreasonably refuse to cooperate with FOL in the pursuit of grants, donations and sponsorships.

47. Historic Preservation Tax Credits

The parties hereto acknowledge that FOL will explore the feasibility of creating a structure through which existing or proposed Historic Tax Credits legislation, or the equivalent, may be used to provide funding to FOL for the renovation and/or operation and/or endowment of the Theatre by FOL. If the parties hereto mutually agree, the City shall cooperate with FOL in the creation of such a structure, provided the City's rights under this Agreement are not adversely affected. City acknowledges, however, that provisions of the Historic Tax Credits legislation may require the transfer of ownership of the Theatre to a holding entity or equivalent for a period of time, provided that the
interests of the City are protected and ownership will revert to the City at the conclusion of the period required by the Historic Tax Credit legislation. In the event that ownership of the Theatre is so transferred, the City agrees to enter into a sublease agreement with FOL that shall contain all the terms and conditions herein contained. The City hereby agrees to turn over any and all funding that the City receives as a result of a Historic Tax Credit structure for the Theatre, as contemplated in this Section, to FOL, provided FOL uses said funding for the purposes of the Theatre.

48. Operations

Following the substantial completion of all work items listed in Attachment A, Phase One Construction, FOL shall ensure that the Theatre operates year-round. In the final year of the initial term of this Agreement, there shall be at least sixty five (65) events per year in keeping with the purposes of the Theatre as described herein, with best efforts attract 100,000 persons.

Except as otherwise noted in this Agreement, including but not limited to provision of initial working capital as described in Section 14. herein and payment of utilities as described in Section 22. herein, FOL shall be solely responsible for expenses related to the operation of the Theatre. (However, this shall not be construed to prevent FOL from applying for, or receiving if granted, funding for the operation of the Theatre or any aspect thereof from the City, the City’s administrator of CDBG and similar funds, local autonomous agencies, the County of Hudson, the State of New Jersey and its autonomous and quasi-autonomous agencies and entities, the Federal government and programs, private foundations, corporations, individuals, commercial sponsors, etc.)
49. **Submission of Annual Report**

No later than 120 days after the end of each fiscal year, unless an extension is approved by the City, FOL shall complete and submit to the City a financial statement including all expenses and revenues of said fiscal year and all assets and liabilities of FOL, which financial statement shall be prepared by a Certified Public Accountant.

With the annual audit, FOL shall submit a narrative report that sets forth the use(s) to which the Theatre was put during the preceding year, the activities of FOL in furtherance of the purposes of the Theatre, a description of what alterations and upgrades, if any were made to the Theatre, and an affirmation of the continued tax-exempt status of the non-profit corporation pursuant to both State and Federal law.

50. **Annual Budget**

FOL shall annually adopt and report to the City an annual budget showing all projected expenses and projected income, divided among earned, contributed and other. Supporting assumptions, including fundraising plans, shall be noted. The current schedules of fees for use of the Theatre’s facilities shall be submitted with the budget.

51. **Default And Remedies**

Each of the following shall be deemed a default by FOL and a breach of the Agreement (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding, in law, in equity or before any administrative tribunal, which has prevented or might prevent compliance by FOL with the terms of this Agreement):

(a) Failure by FOL to pay any installment of basic rent or additional rent within twenty (20) after same shall be due and payable.
Failure by FOL to observe or perform any of FOL's covenants, agreements or obligations (other than nonpayment of rent) as set forth in the prior Sections herein, provided, however, that the City shall have observed and performed all of its covenants herein including, but not limited to Sections 13 and 14, and further provided that the City notifies FOL of such default by written notice and FOL fails to cure or commence to cure said default within thirty (30) days following written notice by the City to FOL. If FOL is proceeding diligently and cannot reasonably cure said default within said thirty (30) days, FOL may apply to the City for a reasonable extension of time to cure said default, providing FOL is proceeding diligently to do so and provided that FOL indemnifies the City for any damages or costs and expenses which it may incur by reason of said default. Notwithstanding the foregoing, if the City is exposed to criminal liability and/or penalties by reason of FOL's default, such additional period of time to cure shall not be provided to FOL.

In the case of failure by FOL to meet the dates for commencement and completion of renovation and upgrade work as described in Section 17, herein, which would otherwise be an event of default under this Agreement, it is agreed that the City shall give thirty (30) days written notice to FOL of its intent to declare a default. Within fifteen (15) days thereafter, FOL shall furnish to the City a written statement of the diligent and good faith efforts it has made to comply with the construction schedule and a request for an extension of the aforesaid dates. If in the reasonable judgment of the City,
FOL has made diligent and good faith efforts to meet the construction schedule, the City shall within fifteen (15) days after receipt of the extension request, either approve or deny the extension as requested. In the event the City shall disapprove the extension request, FOL shall have forty five (45) days thereafter to cure the failure to meet the construction schedule. If FOL does not cure the City may declare a default under this Agreement.

(c) In the event FOL shall discontinue the use, as defined in Section 5, herein, of the Theatre, and such discontinuance continues for a period of ninety (90) days;

Upon any such default by FOL as set forth above, the City shall have the right, at its option, then or any time thereafter while said default shall continue, to declare this Agreement terminated and leasehold interest thereby granted to be terminated. Upon such termination, the City may re-enter and repossess the Theatre and remove all persons and property therefrom, following judgment or order by summary proceedings or other judicial proceeding without being liable for any damages or prosecution or other liability therefor. In such event, FOL shall remain liable to the City for all losses and damages sustained by reason of such default.

If the City shall fail to make necessary repairs and replacements which are to be made and/or performed by it under this Agreement, or shall fail to make any payment as required in this Agreement, said failure shall be deemed a default by the City provided that FOL notifies the City of such default by written notice sent certified mail return receipt requested and the City fails to cure or commence to cure said default within forty five (45) days following written notice by FOL to the City, or in the case of an
emergency arising from the City’s failure to make necessary repairs or replacements that
are the City’s responsibility to make, ten (10) days following written notice by FOL to
the City.

In the event of said default by the City, the City’s obligations to FOL herein under
this Agreement shall remain in force so long as FOL chooses to continue to use and
occupy the premises to the extent practicable, in spite of the City’s default; in the
alternative, upon the City’s default, FOL may cease its operations and vacate the
premises.

Upon such a default, FOL shall have the right to perform such necessary repairs
and replacements and make such payments that are on the part of the City to perform
and/or make under this Agreement, without waiving or releasing the City from any of its
obligations under this Agreement. In such circumstance, FOL shall have the right to
draw and expend moneys from the interest bearing sub-fund known as “Loew’s
Attendance Surcharge Fund” to pay all sums arising from FOL’s performance of
necessary repairs and replacements and making of payments that are on the part of the
City to perform and/or make under this Agreement.

The City may cure the default by: (a) reimbursing FOL for all expenses incurred,
payment made, and losses and damages sustained by FOL by reason of said default;
making all necessary repairs and replacements and payments which are the City’s
obligation under this Agreement but for which the City is in default as herein defined and
which FOL has not made; reaching agreement with FOL as to adequate revision of
deadlines affecting FOL in this Agreement sufficient to compensate for time lost and
other complications in complying with said deadlines due to the City’s default; (b)
replenish the "Loew’s Attendance Surcharge Fund"; or (c) as otherwise mutually agreed
by the parties hereto.

52. **Master Plan**

Upon provision to FOL of the funding described in Section 13. (c) herein, FOL
shall undertake a master planning process with assistance from professional consultants
having expertise in non-profit development, theatrical operations and/or fundraising as
selected by FOL’s board of trustees. Any committee(s) appointed by the board to select
or work with said consultants shall include one of the Mayor’s representatives and one of
the City Council’s representatives on FOL’s board. This master planning process shall
result in an initial report no later than twenty four months after funding for the planning is
provided. A copy of this initial report shall be provided to the City. A final plan shall be
prepared no later than fifty two months after execution of this Agreement, contingent
upon provision of the requisite funding. This plan shall contain specific
recommendations and strategies to increase fundraising and to further expanded
operations and increase both earned income and donations, and containing specific
objectives for an extended five year term of this Agreement. This plan shall also include
a timetable to undertake unaccomplished work items for Attachment B, Additional
Construction, herein. Said plan shall also review options for expanded arts
management/partnering/collaboration by or with FOL, including but not limited to a
school for the performing arts, apprenticeships in stage operations and management, a
children’s museum, a museum of theatre history. A copy of this plan shall be delivered
to the City.

53. **Additional Benchmarks**
The City acknowledges that the establishment and operation of a non-profit arts center in the Theatre, as contemplated herein, is a complex undertaking, and that not all of the factors determining the rate at which FOL can undertake and achieve the goals enumerated in Section 4 are predictable or within the control of FOL. Nevertheless, FOL acknowledges the need to establish some criteria for gauging progress toward those goals. The City and FOL therefore acknowledge accomplishment of the following by FOL as supporting and upholding the goals enumerated in Section 4, as jointly held between them, said accomplishment predicated on provision to FOL of the funding contemplated in this Agreement:

Research, target, approach prospects to make first “leadership” donations.

Develop initial promotional and other support materials for, and launch seat naming campaign.

Define, develop support material for, and promote other naming opportunities.

Subscribe to the Foundation Center and/or other grant information resources.

Retain staffer, responsible for grant research and writing, seat campaign, other development services, and assist in public relations and community outreach.

Identify, research and make application for a minimum of two grants to fund programmatic, operational, institutional or capital objectives in each year after the first year of this Agreement.

Produce a minimum of one fundraising program to benefit the Theatre per year.

Apply for CDBG and other pubic funding sources for historic preservation, the arts and other purposes in keeping with the purposes of the Theatre.

Expand sponsorship solicitations in each year after the completion of work described in Attachment A.

Each full-time manager shall attend or otherwise take part in a minimum of one professional growth/seminars/in-service/other training per year relevant to the manager's responsibilities.
Establish intern or similar co-op education program with one or more local college/university for some or all of the following: office management, book keeping, marketing, grants research assistance, general housekeeping, ticket sales.

Contract with a ticket sales and reservation service.

Expand proprietary regular and email lists and/or purchase outside lists.

Negotiate contract with IATSE local.

Negotiate a minimum of one multiple or block booking arrangement.

Develop proprietary independent film festival and/or partner with Black Mariah Film Festival.

Expand partnering opportunities with NJCU's Media Arts Department.

Establish pilot Indian film festival.

Establish advisory committees to plan and seek sponsorships for programming that is representative of the diverse cultures represented in Hudson County's population.

Establish pilot festivals or the like in which a minimum of five different cultures are showcased.

Establish annual showcase for local performing arts organizations.

Partner with NJCU, other area colleges and local arts organizations to create a pilot program of shows marketed to area youth organizations, schools etc.

Establish pilot program of cross-marketing with other area arts organizations, restaurants, hotels, etc.

Offer to cooperate with the Journal Square Restoration Corporation, Merchants Association, etc. to help create and manage a pilot Square-wide event.

Offer to maintain and if possible expand partnering with the JCPS Visual & Performing Arts Department.

Pursue expanded use of the Grand Lobby for banquets, meetings, etc. by advertising and/or partnering with caterers/event planners.
54. **Option To Renew**

FOL shall have the option to renew this Agreement for a first renewal period of five (5) years from the expiration of the initial term, all upon the terms and conditions hereinafter set forth, provided that:

(1) FOL is not in default of any of the terms and conditions of this Agreement

(2) FOL shall have accomplished seventy-five percentage of the Additional Benchmarks listed in Section 53. herein and as conditioned therein.

(3) A copy of the plan described in Section 52. herein and as conditioned therein, has been provided to the City and said plan contains specific objectives for a first extended term of five years.

The option shall be exercised, if at all, by FOL giving written notice of exercise to the City, which notice must be received by the City no less than four (4) months prior to the expiration date of the initial term.

The time for FOL’s exercise of the option is of the essence. FOL’s right to renew this Agreement as set forth above shall be voidable by the City if:

(i) the notice for renewal referred to hereinabove is not received by the City on or before the date which is four (4) months prior to the expiration of the initial term; or

(ii) FOL is not in possession of the Theatre pursuant to the terms hereof at the time of exercise of the option and at all times thereafter during the initial term; or

(iii) prior to the first day of the first renewal term there occurs a default under this Agreement.
FOL shall pay the basic rent during the first renewal term plus the additional rent and charges, if any, as otherwise specified in this Agreement.

The objectives for an extended five years included in the plan prepared in accordance with Section 52 herein shall be incorporated into this Agreement during the first renewal term as benchmarks, substituting for those benchmarks enumerated in Section 53.

All other provisions of the Agreement shall remain in full force and effect.

At the conclusion of the first renewal term, FOL shall have the option to renew for a period of five years (5) from the expiration of the first renewal term. Said second renewal shall be governed by the conditions hereinabove set forth for the first renewal.

55. Partial Renewal

If FOL has completed the construction and maintenance requirement of this Agreement, but has not met the goals for operation or the additional benchmarks, FOL shall have the option to enter into an agreement with the City, upon mutually agreeable terms, to extend those portions of the Agreement concerning construction and maintenance.

56. Good Faith

The parties hereto shall act in good faith to carry out their respective responsibilities.

57. No Agency

It is understood and agreed that nothing herein contained shall be deemed to create an agency relationship between the two parties hereto, nor the two parties' staffs and/or agents.
58. **Assumption of City’s Responsibilities**

All or a portion of the City’s obligations under this lease may be assumed by the Jersey City Redevelopment Agency or Jersey City Economic Development Corporation, provided both parties hereto agree.

In Witness Whereof, the parties have hereunto set their hands and seal, or caused these presents to be signed by their proper corporate offices as of the date first above written:

Attest:

City of Jersey City

By: [Signature] 10/15/04

Business Administrator
Subject to approval of the Municipal Council

Friends of the Loew’s, Inc.

By: [Signature] 10/15/04

President

Acting Mayor