



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 09-061

TITLE: AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE LEASE, BY WAY OF A MEMORANDUM OF UNDERSTANDING, FOR THE LOEW'S THEATER, BLOCK 1863, LOT N24, TO THE FRIENDS OF THE LOEW'S INC., A NON-PROFIT CORPORATION

COUNCIL offered and moved adoption of the following Ordinance:

WHEREAS, the City of Jersey City executed a lease on October 15, 2004, with the Friend of the Loew's, Inc., for Block 1863, Lot N24 (the Loew's Theater); and

WHEREAS, by the adoption of Ordinances 04-033, amended by Ordinance 04-073, the City of Jersey City approved the execution of a lease with the Friends of the Loew's, Inc.; and

WHEREAS, the ordinances were authorized pursuant to N.J.S.A. 40A:12-14 of the Local Lands and Buildings Law (Law), which permits a Municipality 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(i), subject to certain conditions; and

WHEREAS, the purpose of the lease was to enable Friends of the Loew's Inc., a non-profit organization of the State of New Jersey, to 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, as the result of subsequent negotiations over the lease terms, the parties have agreed to modify the Lease by the execution of a Memorandum Of Understanding.

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

1. The Mayor or Business Administrator is authorized to execute an amendment to the October 15, 2004 lease, by way of a Memorandum Of Understanding, with Friends of the Loew's, Inc., a non-profit corporation, which shall contain at a minimum the following mandatory terms and conditions of N.J.S.A. 40A:12-14 and N.J.S.A. 40A:12-15:
 - a) The property will be used solely for the following public purposes:

renovation of 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.
 - b) 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:
 - (i) the names and addresses of the principals of the corporation;
 - (ii) 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;

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE LEASE, BY WAY OF A MEMORANDUM OF UNDERSTANDING, FOR THE LOEW'S THEATER , BLOCK 1863, LOT N24, TO THE FRIENDS OF THE LOEW'S INC., A NON-PROFIT CORPORATION

- (iii) the activities undertaken in furtherance of the public purpose;
- (iv) the approximate value or cost of such activities; and
- (v) an affirmation of the continued tax exempt status of the non-profit corporation pursuant to state and federal law.

2. The Memorandum Of Understanding shall be in substantially the form attached, subject to such modification as the Corporation Counsel or Business Administrator deems appropriate or necessary.

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. 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.
- C. This ordinance shall take effect at the time and in the manner provided by law.
- D. 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 repealers 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.

JM/he
4/17/09

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED: _____
APPROVED: _____
Business Administrator

Certification Required
Not Required

MEMORANDUM OF UNDERSTANDING (1/30/09)

The City of Jersey City (the "City") is the owner of the property known as the Loew's Jersey Theater, 54 Journal Square, Jersey City, New Jersey. The Friends of Loew's, Inc. is a New Jersey not for profit corporation formed for the sole purpose of the restoration and operation of the theatre for the benefit of the public. It is essential that a working relationship exists between the City and the Friends of Loew's, as the City's tenant, such that the interests of the public are protected and served with regard to the theatre, and that the theatre is restored to an active and attractive venue for entertainment and the arts.

Differences have arisen in the past between the City and the Friends of Loew's which both parties now seek to resolve, such that the required working relationship can be established and maintained.

Therefore, the parties wish to memorialize the understanding they have reached.

- 1) The relationship of Landlord and Tenant exists between the City and the Friends of Loew's.
- 2) This relationship is defined by the Lease between the parties dated October 15, 2004, which remains in full force and effect. The parties agree that this Lease is valid and binding and in full force and effect.
- 3) The Board of Trustees of the Friends of Loew's is responsible for the management of the theatre.
- 4) The Board of Trustees for the Friends of Loew's shall not exceed twenty-four (24) members, seventeen (17) members whom shall be selected by the Friends of Loew's for terms of five (5) years, two (2) members, who shall be appointed by the City Council President and shall serve at the pleasure of the Council President, but for a period of at least one (1) year; and, five (5) members, who shall be appointed by the Mayor and shall serve at the pleasure of the Mayor. The number of Board members shall not change for a period of three (3) years from the final date of adoption of the Memorandum of Understanding.
- 5) The balance of the Board consists of volunteers who are selected based upon their talents in management, the arts, or other areas which are important to the restoration and operation of the theatre.
- 6) The accomplishment of the aims and objectives of the Friends of Loew's and the Lease between the City and the Friends of Loew's consists of the following parameters:
 - A) Adequate planning, such that the financial needs of the project including capital improvements, are made known to the City sufficiently in advance that the City can take appropriate and effective steps to provide for funding in the future municipal

PM
7/17/09

budgets, in compliance with the relevant statutes. As to the sources of funding outside of the usual budgetary process, such as the 111 First Street funds and UEZ funding, the City will cooperate with the Friends of Loew's to identify and/or raise such funds and/or to disburse such funds in a timely manner, to insure that the funds are used as intended for the work contemplated in the lease. Nothing contained herein shall be deemed to commit the City to encumber funds in any proposed municipal budget for the financial requirements of the theater.

- B) The provision of anticipated services, such as utilities, maintenance and repair, insurance and, if necessary, replacement of fixtures and equipment (but not capital improvements) as required under this Lease.
- C) Cooperation between the parties in the planning and execution of necessary restorative work on the theatre itself.
- D) Cooperation between the parties in the booking of events, such that the Friends of Loew's are able to accommodate such events without concern over the physical condition of the theatre or conflicts with City Sponsored Events, as defined in the Lease.
- E) The holding of regular meetings of the Board to discuss current issues affecting the building, its operation, restoration and maintenance, and events to be held there.
- F) The fostering of a spirit of mutual cooperation consistent with the duties and obligations of the Friends of Loew's and the City of Jersey City.
- G) The creation and maintenance of open channels of communications to supplement the regular Board meetings.

7) It is agreed by both parties that the terms and conditions of the Lease apply to both parties and that each party will abide by the terms and conditions of the Lease.

8) As to the dealings between the parties, each will act in good faith and will deal fairly with the other.

9) The City shall make good faith efforts to secure and provide all funding called for in the lease including capital improvements operating capital and master planning. The City shall undertake the capital improvements as defined under the Lease, subject to Council appropriation and/ or approval, only if good faith efforts to locate funding for the capital improvements are unsuccessful. The City shall undertake said capital improvements in conjunction and coordination with the Friends of the Loew's. The

PM
7/17/09

failure to provide funding as defined under the Lease or the failure of the Friends of the Loew's to meet deadlines specifically related to the City's failure to provide funds shall not be deemed to be a default of the Tenant under the terms of the Lease.

10) The City will take such steps as are necessary to accomplish the securing of funds from sources other than the City, as contemplated by the Lease, including without limitation:

- A) The appropriation of \$50,000.00 by the appropriate City parties/agencies/officials from the tax abatement extension resolution of the ADP Building matter upon the submission of a spending plan by Friends of Loew's, shall be expended in accordance with the spending plan and all actions shall be governed by all applicable Federal/State laws, including, but not limited to, the Local Public Contracts Law;
- B) The appropriation of the remaining funding received by the City from the New Gold Equities agreement once said funds have been received by the City and a new building at 111 First Street is approved. Friends of Loew's shall be entitled to \$333,000 payment from the City within ninety (90) calendar days from receipt by the City of said monies from New Gold Equities, which is triggered by site plan approval for a new building at 111 First Street. Friends of Loew's shall be entitled to an additional \$167,000 payment from the City within ninety (90) calendar days from receipt by the City of said monies from New Gold Equities, which will be triggered by the issuance of the Construction Permit for the new building at 111 First Street. Said monies shall then be appropriated by the applicable City parties/agencies/officials once it receives the submission of a spending plan by the Friends of Loew's and said monies shall be expended in accordance with the spending plan and all actions shall be governed by applicable Federal/State law, since these monies are deemed by law to the public funds under law; including, but not limited to, the Local Public Contracts Law; and,
- C) The applications for funds from the Jersey City Urban Enterprise Zone.
- D) The obligation of the City to cooperate with the Friends of Lowes in the making and prosecution of applications for UEZ funding shall continue throughout the term of the Lease and any extensions thereof.
- E) Within sixty (60) days of the final execution of the Memorandum of Understanding, the City shall provide Friends of Loew's with a written statement containing:

ps
7/17/09

a) a specific timetable for the filing of funding applications with the UEZ as to capital improvements, operating capital and master planning; and,

b) the identities of alternate sources of funding, if UEZ funding is not available.

F) Any capital improvement amounts set forth in the original Lease shall be increased by twelve (12%) percent to take into account increased costs since the original Lease.

11) Friends of Loew's will make all reasonable efforts to obtain funds from donations, ticket receipts, theatre rentals, grants and any other sources to supplement the funds provided by the City.

12) As to funds to be provided by the City, it will act promptly and in compliance with all applicable statutes and ordinances in providing these funds. The City will also take these commitments into account in drafting and adopting its annual budget.

13) The Friends of Loew's will cooperate with the City to insure that all contracts entered into by Friends of Loew's are negotiated in such a manner as to keep the City fully advised, through the City's members on the Board, of such negotiations; to abide by all terms and conditions under such contracts, including the requirements of governmental and quasigovernmental entities in connection with such contracts, as may be applicable; and to keep appropriate and accurate books and records such that the use of such funds can be accounted for. The Friends of Loew's agree that they shall be bound by the requirements of any and all applicable laws, ordinances, rules and regulations particularly as to the Local Public Contracts Law, especially as it relates to the expenditure of all public funds and/or any requirement under the Lease. Contracts for the rental of the theater shall be excluded from the provisions of this paragraph.

14) The parties will cooperate in the design, planning, phasing and scheduling and execution of work on the theatre structure and systems, as described in the Lease as Phase IA Construction. As to public funds, and/or any other situation required by this Lease, the Friends of Loew's shall be bound by any and all applicable laws, at any government level, particularly the Local Public Contracts Law.

15) The final plans and specifications developed by the Friends of Loew's architect will be submitted to the City for the drafting of appropriate Requests for Proposals for such work, and the awarding of contracts by the City, while the direct oversight and management of such work will be done by the Friends of Loew's architect in cooperation with the appropriate City offices and agencies. However, the plans and specifications developed by the Friends of Loew's architect shall not be subject to substantial and material modification without the approval of Friends of Loew's and the City, which shall not be unreasonably withheld.

Res
7/17/09

16) The City shall exercise good faith in the oversight of the bidding process. No decision shall be made on such bids unless and until they have also been reviewed by the Friends of Loew's' architect, to insure that the bids meet such architect's approval on specific and material points, which shall not be unreasonably withheld. The City shall, with regard to the Friends of Loew's, exercise good faith and fair dealing in its review of bids, and will not exercise its right to reject any and all bids in a manner which predominantly delays or frustrates the purposes of the Friends of Loew's.

17) "Direct oversight and management" of work by Friends of Loew's' architect shall specifically include: scheduling and phasing of work; procurement of materials; site inspections; approval of submittals; authorization to proceed with specific tasks; the issuance of stop work and change orders; partial, conditional and final approvals of work; and, the like.

18) The City shall, where applicable and appropriate, promptly process such payments to contractors as are approved in writing by Friends of Loew's' architect and applicable City officials/professionals, upon such architect's/officials/professionals certifications that the work has been performed in compliance with the plans and specifications. The City will not arbitrarily or capriciously withhold such approval of payment. All requests for approval for payment will be processed by the City within fifteen (15) business days (Saturday, Sundays and holidays excluded) of receipt by the appropriate City officials and either approved for payment to be submitted to the City Council thereafter, or disapproved for payment. If payment is disapproved, the City shall specify, in writing, the reason(s) for disapproval with reference to the work performed and the non-compliance of the contractor. If the City fails to provide said written reason(s) by the close of business on the fifteenth (15th) business day (Saturday, Sunday and holidays excluded) following submission of the request for approval to the appropriate City officials, then the request shall be deemed approved for payment to be submitted to the City Council thereafter. The term "applicable and appropriate" shall mean that the Friends of Loew's' architect has certified that such work has been completed in accordance with specifications and that the City has no specific dispute that the work has not been certified in accordance with such specifications.

19) The parties recognize that the State of New Jersey has entered into a grant agreement with the City which, upon the execution of a subgrant agreement between the City and Friends of Loew's, will make funds available for improvements to make the theater accessible to persons with physical or developmental limitations. A resolution as to the subgrant agreement has been passed by the City Council, notwithstanding that the terms of the subgrant agreement have not been finalized. The parties will cooperate in a prompt and timely manner to insure that the terms of the subgrant agreement are finalized and the funds made available. Further, the parties will cooperate to insure that such funding remains available from the State of New Jersey.

20) The City and the Friends of Loew's mutually agree that HMR Architects is acceptable to both parties. The City and Friends of Loew's shall apply to the Jersey City Urban Enterprise Zone and/or other non City funding sources and/or the City for the direct appropriation and approval, by the City Council, for funding for HMR. The

PM
7/17/09

relationship of architect and client shall be between HMR Architects and the Friends of Loew's.

21) Friends of Loew's' architect will render all invoices in such form as the City may require to insure prompt processing and compliance with all applicable laws and regulations.

22) Friends of Loew's shall be copied on all written communications between the City and Friends of Loew's' architect.

23) The City recognizes the autonomy of the Friends of Loew's and will not interfere with its right to enter into contracts and/or agreements which are not contrary to law (where applicable), contrary to the Lease and contrary to this memorandum, including contracts with licensed professionals.

24) In the event of disputes, the City and Friends of Loew's will make good faith efforts to resolve such disputes by consent, in an equitable and prompt manner, before recourse to the courts.

25) As to any technical defect in the Lease between the parties, such as the attestation of the same by the City Clerk, the City and Friends of Loew's will promptly attend to the remediation of such defect.

26) The Mayor and Council will take immediate steps to appoint members to the Board of Trustees.

27) Seven (7) days notice of the meeting of the Board of Trustees will be given to its members and the City. Seven (7) days notice of Council meetings and/ or Council resolutions/ ordinances shall be given to the Friends of the Loew's regarding Loew's/ Friends of the Loew's' issues.

28) The parties will cooperate to insure that the Board holds regular meetings at least quarterly and emergent meetings as needed.

29) Upon execution, this Memorandum will be deemed to be an addendum to the Lease between the parties, and all terms of the Lease inconsistent with this Memorandum shall be deemed subject to the provisions of this Memorandum.

30) The City, subject to the availability of funds, will fund the retention of a consultant, selected and hired by the Friends of Loew's in consultation with the City to advise on the master plan for the future operation of the Theatre. The City will not arbitrarily reject the Friend's of Loew's' choice. Subject to the approval of the consultant by the City Council and providing that funding is available from the City and that the funding has been appropriated for the purpose prior to retention, Friends of Loew's shall retain said consultant within one hundred eighty (180) calendar days of the full execution of this Memorandum of Understanding. This consultant shall not be a substitute for the master plan process contemplated in the Lease nor shall the hiring of the consultant be deducted from the funds designated by the Lease for the master plan. Nothing herein shall

PM
7/17/09

be deemed to have the Friends of Loew's bound by the recommendations of the Consultant and the Friends of Loew's reserves the right to challenge any recommendations of the Consultant.

31) Three (3) representatives of the Friends of Loew's and three (3) representatives of the City shall meet not more than every two (2) months, or more frequently if mutually agreed to, with regard to meetings of a general nature. The same number of representatives from the Friends of Loew's and the City shall meet not more than monthly, or more frequently if mutually agreed to, to address issues concerning construction as well as to address Lease Agreement timelines/bench marks. Construction items shall take priority at said meetings. The parties agree, after the first year anniversary of the final execution of the Memorandum, to meet quarterly during the remainder of the Lease Agreement. The parties will endeavor to distribute a written agenda to each party at least three (3) business days prior to the meeting.

32) The provisions in Section 24 of the Lease, as to insurance covering "Products/Completed Operations Aggregate Limit" shall be reduced from \$2,000,000 to \$1,000,000.00.

33) The annual audit called for in Section 49 of the Lease shall be completed, and a copy forwarded to the City, through its Business Administrator, by June 1st of the year following the year in which the audit covers (i.e. an audit for 2008 must be done and forwarded by June 1, 2009).

34) The parties agreed that funding from The County of Hudson Open Space Trust Fund would be sought for the replacement of the side exit doors and the repair of the fire escapes, since UEZ funding originally budgeted for these items and become unavailable. The County did grant funds for the replacement of some of the doors, while indicating that a subsequent application for the balance of the doors and the fire escapes would be viewed favorably. As part of these changes, the City agrees to submit, within sixty (60) days of the final execution of the Memorandum of Understanding, an application to the UEZ Authority, or if the City deems appropriate, alternative funding source for funds to cover the air conditioning installation over and above \$600,000.00 currently granted from The County of Hudson Open Space Trust Fund for said work. Friends of the Loew's is presently in the design phase of that project and the City agrees, as part of the Memorandum, that said monies for air conditioning installation necessary to complete the project shall be funded as described above.

35) Recognizing that there have been and will be contracts entered into by the Friends of Loew's for events at the Theatre and that some of the work to be done would preclude the use of the Theatre for such events, the work would be scheduled around these bookings. Both sides would cooperate in such a way as to minimize the adverse impact of such work on the operations of the Theatre. On the City's part, this would require that the processing of applications for permits and the like, as well as the scheduling and completion of required inspections, would be done in a prompt and diligent manner. On the part of the Friends of Loew's, the Friends would allow adequate time for the completion of work between bookings and will consult with the architect, the

PM
7/17/09

contractors and the City's Construction Official to insure that the time allowed is sufficient for the work being done.

36) The City shall provide the Friends of Loew's with written responses within thirty (30) calendar days of final execution of this Memorandum of Understanding as to any outstanding questions the Friends of the Loew's have regarding the status of a Livable Cities Grant received by the City for the purposes of making ADA related improvements to the Loew's Theatre, monies received by the City for the Loew's Theatre as part of a tax abatement extension granted to the ADP building in Journal Square, and funds from the 111 First Street settlement. The answers provided by the City shall include description of all information that Friends of the Lowe's must provide when making an application to the City or other appropriate entity for the provision/ use of these various funds.

In conclusion, the parties recognize that the Loew's Jersey Theatre was a landmark public resource for generations of the residents of Jersey City and the surrounding area which fell into disrepair and disuse due to changes in the entertainment industry and the general deterioration of the Journal Square area, which had been a regional center of commerce and retail services. Now that the City and Journal Square are experiencing a renaissance, the parties will work to restore the theatre to its original place or importance as a popular and cultural resource consistent with its former ranking among the great theatres of America.

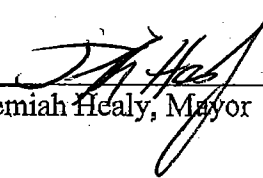
IN WITNESS WHEREOF, the parties have hereto set their hands and seal, or caused those present to be signed by the appropriate corporate officers as of the dates set forth below.

ATTEST:

CITY OF JERSEY CITY,
a municipal corporation of the
State of New Jersey



Robert Byrne, City Clerk

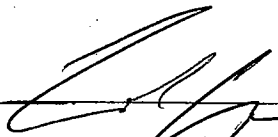
By: 

Jeremiah Healy, Mayor

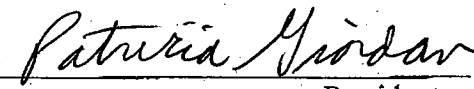
Dated: JUN 30 2009

ATTEST:

FRIENDS OF LOEW'S, INC.



Dated: 7/17/09

By: 

Patricia Jordan
President

Ordinance of the City of Jersey City, N.J.

Ord. 09-061

ORDINANCE NO. _____

TITLE: 3.J. APR 22 2009 4.J. MAY 20 2009



An ordinance authorizing an amendment to the lease, by way of a memorandum of understanding for the Loew's Theater, Block 1863, Lot N24, to the Friends of the Loew's Inc., a non-profit corporation.

RECORD OF COUNCIL VOTE ON INTRODUCTION								APR 22 2009 9-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING								MAY 20 2009 9-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
KENNY	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote *PATRICIA GORDAN*
YVONNE BALCER

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
KENNY				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE												MAY 20 2009 9-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.				
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓						
KENNY	✓			FULOP	✓			FLOOD	✓						
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓						

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on APR 22 2009

Adopted on second and final reading after hearing on MAY 20 2009

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on MAY 20 2009

Robert Byrne

Robert Byrne, City Clerk

APPROVED:
Mariano Vega, Jr.

Mariano Vega, Jr., Council President

Date: MAY 20 2009

APPROVED:
Jerramie Kelly

Jerramie Kelly, Mayor

Date to Mayor MAY 21 2009

*Amendment(s):