

**CITY CLERK
OFFICIAL COPY**

06-264-19

AMENDMENT AND MODIFICATION AGREEMENT

THIS AMENDMENT AND MODIFICATION AGREEMENT is made and entered into this 9th day of October, 2007, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), **ST. CHARLES TOWN COMPANY THEATER, LLC**, a Colorado limited liability company, (“Borrower” or “Contractor”) whose address is 730 17th Street, Suite 200, Denver, Colorado 80202 and **CHARLES H. WOOLLEY** (“Guarantor”), whose address is 825 Vine Street, Denver, Colorado 80202 (together, the “Parties”).

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated April 18, 2006, relating to a loan of Two Million Four Hundred Thousand Dollars (\$2,400,000) to a selected business entity within a designated target area (the “Loan Agreement”); and

WHEREAS, two deeds of trust (the “Deeds of Trust”) for the benefit of the City were executed in order to secure this loan: (i) executed by St. Charles Town Company Theater, LLC, a Colorado limited liability company, dated May 11, 2006, and recorded on May 18, 2006 at Reception No. 2006079150 of the records of the City and County of Denver, State of Colorado, and encumbering the property known and numbered as 2526 E. Colfax Avenue, Denver, Colorado and 1454, 1460 and 1480 Columbine Street, Denver, Colorado (the “Colfax Deed of Trust”); (ii) executed by St. Charles Town Company, LLC, a Colorado limited liability company, dated May 11, 2006, and recorded on May 18, 2006 at Reception No. 2006079151 of the records of the City and County of Denver, State of Colorado, and encumbering the property known and numbered as 730 17th Street, Units 2A, 2B and 2C, Denver, Colorado (the “ABC Deed of Trust”); and

WHEREAS, the Deeds of Trust secure the repayment of the indebtedness evidenced by Borrower’s promissory note dated May 11, 2006 (the “Note”); and

WHEREAS, the Parties wish to modify the terms and conditions of the Loan Agreement, Note, Deeds of Trust, and any other documents evidencing or securing the City’s loan (together, the “Loan Documents”), to release the ABC Deed of Trust and substitute that collateral with a deed of trust on other real property;

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& COUNTY ATTORNEY

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the adequacy of which is acknowledged, the Parties hereby modify the Loan Documents as follows:

1. They City agrees to release the ABC Deed of Trust in exchange for a substituted deed of trust against the real property known and numbered as 730 17th Street, Unit 2D, Denver, Colorado 80202, subject to prior encumbrances not to exceed Nine Hundred Sixteen Thousand Dollars (\$916,000). The Colfax Deed of Trust shall remain in place.

2. The Loan Documents are hereby modified to reflect the amended security.

3. The Agreement is amended by the addition of Paragraph 21: **PASS-THROUGH OF CITY OBLIGATIONS PURSUANT TO THE APPLICANT VERIFICATION STATUTE:**

A. This Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as hereafter amended (together the “Applicant Verification Statute”). Compliance by the Contractor is expressly made a contractual condition of this Agreement.

B. The Contractor shall verify the lawful presence in the United States, of each natural person eighteen years of age or older (the “Applicant”), who applies for Federal, State or Local Public Benefits (“Benefits”) conferred pursuant to this Agreement, as such Benefits are defined in the Applicant Verification Statute. The Contractor shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form attached hereto as **Exhibit C** and incorporated herein by this reference. The Contractor shall maintain copies of each Applicant’s identification documentation and affidavit, and shall make such copies available to the City upon request.

4. The Agreement is amended by the addition of Paragraph 22: **VERIFICATION OF LAWFUL PRESENCE IN UNITED STATES OF GUARANTOR:**

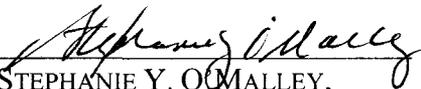
A. This Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, as now existing or hereafter amended (the “Verification Statute”). Compliance by the Guarantor with the Verification Statute is expressly made a contractual condition of this Agreement.

B. Guarantor shall verify his or her own legal status in the United States by execution of the Verification Affidavit attached hereto as **Exhibit D**.

5. As modified herein, the Loan Documents remain unmodified and are hereby ratified and reaffirmed.

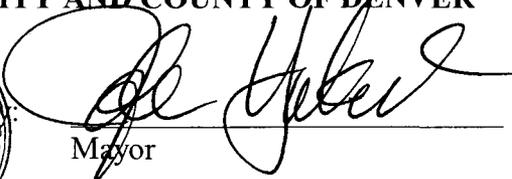
IN WITNESS WHEREOF, the Parties have caused this Amendment and Modification Agreement to be executed as of the day and year first above written.

ATTEST:


STEPHANIE Y. O'MALLEY,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver



CITY AND COUNTY OF DENVER

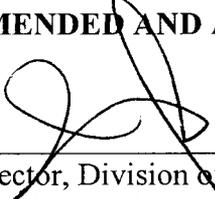

Mayor

RECOMMENDED AND APPROVED:

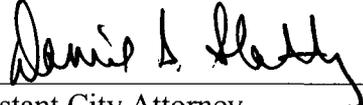
APPROVED AS TO FORM:

City Attorney for the
City and County of Denver

By:


Director, Division of Housing and
Neighborhood Development

By:


Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By:


Auditor
Contract Control No. GE6A010(1)

"CITY"

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EXHIBIT C

VERIFICATION AFFIDAVIT

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

_____ I am a United States citizen, or

_____ I am a Permanent Resident of the United States, or

_____ I am an alien lawfully present in the United States pursuant to Federal Law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that State law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute §18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

DATE

[Print] Name of Applicant

EXHIBIT D

GUARANTOR AFFIDAVIT

For the City and County of Denver as Proof of Lawful Presence in the United States

I, **CHARLES H. WOOLLEY**, Guarantor, swear or affirm under penalty of perjury under the laws of the State of Colorado the following:

1. I am over eighteen years of age and am competent to make this Affidavit.

2. I swear or affirm that (check one):

I am a United States citizen, or

I am a legal permanent resident of the United States, or

I am an alien lawfully present in the United States pursuant to Federal law.

3. I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statutes § 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

DATE: 8/29, 2007.


Signature of Guarantor

BY AUTHORITY

ORDINANCE NO. 533
SERIES OF 2007

COUNCIL BILL NO. 532
COMMITTEE OF REFERENCE:

Neighborhood, Community & Business Revitalization Committee

A BILL

For an ordinance approving a proposed Amendment and Modification Agreement between the City and County of Denver and St. Charles Town Company Theater LLC, relating to a loan associated with the redevelopment of the Lowenstein Theater.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Amendment and Modification Agreement between the City and County of Denver and St. Charles Town Company Theater LLC, in the words and figures contained and set forth in that form of Amendment and Modification Agreement, filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, on the 20th day of September, 2007, City Clerk's Filing No. 06-264-A is hereby approved.

COMMITTEE APPROVAL: September 11, 2007

MAYOR-COUNCIL DATE: September 18, 2007

PASSED BY THE COUNCIL October 1 2007

APPROVED [Signature] - PRESIDENT
[Signature] - ACTING MAYOR Oct 2 2007

ATTEST: [Signature] - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2007 _____ 2007

PREPARED BY: Ashley E. Arroyo - ASSISTANT CITY ATTORNEY - September 20, 2007

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to §3.2.6 of the Charter.

City Attorney
BY: [Signature] Asst City Attorney

DATE: 20 Sep 07