

WHEN RECORDED MAIL TO:

City and County of Denver
Office of Economic Development
201 W. Colfax Ave., Dept. 204
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

FOURTH AMENDMENT AND MODIFICATION AGREEMENT

THIS FOURTH AMENDMENT AND MODIFICATION AGREEMENT (this "Amendment") is made by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), **ST. CHARLES TOWN COMPANY THEATER LLC**, a Colorado limited liability company, whose address is 1800 Glenarm Place, 2nd Floor, Denver, Colorado 80202 (the "Borrower"), and **CHARLES H. WOOLLEY**, an individual whose address is 1800 Glenarm Place, Denver, Colorado 80202 (the "Guarantor"), (together, the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into that certain Loan Agreement dated April 18, 2006, as amended by that certain Amended and Modification Agreement dated October 9, 2007, as amended by that certain Second Amendment and Modification Agreement dated September 29, 2009, and as amended by that certain Third Amendment and Modification Agreement dated October 12, 2010 relating to a loan in the original principal amount of Two Million Four Hundred Thousand Dollars (\$2,400,000) ("Loan") to a selected business entity within a designated target area (as amended, the "Loan Agreement"); and

WHEREAS, the following two deeds of trust (the "Deeds of Trust") for the benefit of the City were executed in order to secure the 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, more particularly described on **Exhibit A** attached hereto (the "Colfax Deed of Trust"); and (ii) executed by St. Charles Town Company LLC, a Colorado limited liability company, as to an undivided 98% interest, and Transamerica Equity Corporation, a Nevada corporation, as to an

undivided 1% interest, and Rocky Mountain Equity Corporation, a Colorado corporation, as to an undivided 1% interest, dated November 21, 2007, and recorded on November 21, 2007 at Reception No. 2007180181 of the records of the City and County of Denver, State of Colorado, and encumbering the property known and numbered as 730 17th Street, Unit 2D, Denver, Colorado, more particularly described on **Exhibit B** attached hereto (the “Unit 2D Deed of Trust”); and

WHEREAS, the Third Amendment and Modification Agreement allowed for the Unit 2D Deed of Trust to be released and replaced by other collateral, but such replacement never took place and the Unit 2D Deed of Trust remains in place; and

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

WHEREAS, Borrower executed a loan for the benefit of U.S. Bank National Association (“Bank”) in the original principal amount of \$2,451,000 (“Senior TIF Loan”) and the Bank assigned its interest in the Senior TIF Loan to Lowenstein TIF, LLC (“Senior TIF Holder”), the repayment of the Senior TIF Loan is to be accomplished by the assignment of the right to receive tax increment revenue under a Redevelopment Agreement dated July 21, 2006 between St. Charles Town Company Theater LLC and the Denver Urban Renewal Authority (“DURA”); 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 Loan (together, the “Loan Documents”), to amend the Loan Documents in order to suspend current payments and accept assignment of revenue for payment thereafter; release the Guarantor; release the Unit 2D Deed of Trust; provide for the forgiveness of the debt remaining unpaid after the expiration of the revenue available for debt repayment and the sale of the property encumbered by the Colfax Deed of Trust; to provide for prepayment of the loan at a reduced amount; and to provide for certain contingencies, including bankruptcy.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the Parties agree as follows:

AGREEMENT:

1. The Parties agree that the outstanding principal balance of the Note as of November 1, 2011 is _____. Monthly installments of principal and interest in the amount of Eighteen Thousand

Five Hundred Ninety-Eight and 10/00 Dollars (\$18,598.10) (“Monthly Payment”) shall be suspended beginning November 1, 2011, through and including the time that the Senior TIF Loan is fully repaid (the “Moratorium Period”). Interest shall accrue at a rate of three percent (3%) during the term of the Moratorium Period. The Parties agree that the Borrower is in default of its repayment obligations, in the amount of \$167,382.90, representing payments due and owing for the period February 1, 2011 through October 1, 2011. This Fourth Amendment and Modification Agreement is contingent upon, and shall not become effective until Borrower has paid this amount to the City.

2. Borrower will assign its rights to receive reimbursements from DURA pursuant to the Redevelopment Agreement, subject only to the rights of the holder of the Senior TIF Loan. The assignment shall be evidenced by a document mutually agreeable to the City and Borrower. After the Senior TIF Loan is fully paid, which shall be evidenced by monthly accountings provided to the City by the Senior TIF Holder, as confirmed by Borrower and DURA, all available reimbursements under the Redevelopment Agreement shall be directed to be paid from DURA to the City until such time as such reimbursements are no longer available under the Redevelopment Agreement or until the indebtedness evidenced by the Note is fully repaid.
3. Upon execution of this Fourth Amendment and Modification Agreement and payment of \$167,382.90 from the Borrower to the City, the City releases the Guarantor from his personal guarantee of the Loan. The release shall be evidenced by a document mutually agreeable to the City and Guarantor.
4. Upon execution of this Fourth Amendment and Modification Agreement, the payment of \$167,382.90 from the Borrower to the City as provided in Section 3, and the execution of the assignment referenced in Section 2, the City shall release the Unit 2D Deed of Trust.
5. Upon (i) notification to the City by DURA that no more reimbursements from the Redevelopment Agreement are available and (ii) the City’s receipt of the sums owed the City pursuant to the sale of the property encumbered by the Colfax Deed of Trust as hereinafter provided, the City shall cancel the Note and return the Note to Borrower and release the Colfax Deed of Trust. Notwithstanding any other provision set forth herein, upon the sale of the Property by the Borrower to an unrelated third party, the City shall be entitled to receive at closing and the sums owed to the City shall equal the lesser of (a) the “net sale proceeds” (defined below); (b) total amount of unpaid principal and interest then due under the Loan, less

the amount of Reimbursements that remain due and payable by DURA; or (c) \$860,000. “Net sale proceeds” means the sales price of the property less required debt repayments for loans senior to the Loan, and reasonable and customary commissions and closing costs and prorations as is customary for a closing in Denver, Colorado. Upon receipt of the amounts due the City under subsection (ii), the City shall release the Colfax Deed of Trust but shall not cancel the Note. After the receipt of amounts due the City under subsection (ii), the sole source of and liability for repayment of the Note shall be from the Redevelopment payments from DURA. Only on the earlier of (a) the Note having been paid in full or (b) the later of the sale of the Property and receipt of all payments due the City from DURA under the Redevelopment Agreement will the Note be cancelled.

6. The Borrower, upon the City’s determination that it is in the City’s best interest at that time, in accordance with the procedures set forth herein, may pay in cash One Million Five Hundred Seven Thousand Seven Hundred Twenty-Three Dollars (\$1,507,723.00) less the sums set forth below, to the City in full satisfaction of the indebtedness evidenced by the Note, at such time the Note shall be cancelled and returned to the Borrower and the Deeds of Trust released. Borrower shall have the option to exercise a cash buy-out of the Loan (“Buy-out Option”) in the amount of \$1,507,723.00 less (i) a portion of the repayment of the \$167,382.90 payment herein representing repayment of principal and less all other principal payments made on the Loan from the date hereof through the date of exercise of Buy-out Option. The Borrower may exercise the Buy-out Option at any time beginning upon the repayment of the Senior TIF Loan and continuing for so long as the Loan is outstanding. The exercise of the Buy-out Option shall require a release by the City of the Colfax Deed of Trust and shall terminate City’s rights under Section 5. Borrower shall provide written notification to City no less than 30 days prior to its intent to exercise the Buy-out Option (the “Buy-out Option Notice”). If Borrower exercises the Buy-out Option, the City shall have thirty (30) days to reject the right of Borrower to exercise the Buyer’s Option (“City Rejection”). If there is a City Rejection then the Borrower may not exercise the Buyer’s Option and the City shall be entitled to the rights under Section 5.
7. In the event Borrower files for bankruptcy during the period commencing on November 1, 2011 and continuing through the earlier of (i) the repayment of the Senior TIF Loan, or (ii) September 30, 2015, Borrower agrees to acknowledge and hereby does acknowledge a priority claim to the City in the amount of the loan outstanding as of October 14, 2011, less all payments

made thereafter or such lesser amount outstanding on the indebtedness evidenced by the Note at the time of such bankruptcy.

8. The Director of the Office of Economic Development, or permitted designee, is hereby authorized to execute documents necessary to release the Unit 2D Deed of Trust and the Guaranty and to determine and effect the acceptance of the cash payment in Section 6 herein and to otherwise execute and deliver all documents necessary or convenient to carry out the provisions hereof.
9. Borrower and Guarantor consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
10. The Loan Documents are hereby modified to reflect each of the modifications within this Fourth Amendment and Modification Agreement.
11. Except as modified herein, the Loan Documents remain unmodified and are hereby ratified and reaffirmed.

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Contract Control Number: OEDEV-GE6A010-04

Vendor Name: ST CHARLES TOWN COMPANY THEATRE LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of December 21, 2011.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

A handwritten signature in black ink, appearing to read "Richard Dewar", written over a horizontal line.

Richard Dewar, Deputy Clerk and Recorder

By A handwritten signature in black ink, appearing to read "Michael B. Hancock", written over a horizontal line.
Michael B Hancock, Mayor

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By A handwritten signature in black ink, appearing to read "Jennifer Welborn", written over a horizontal line.
Jennifer Welborn, Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By A handwritten signature in black ink, appearing to read "Cary Kennedy", written over a horizontal line.
Cary Kennedy, Manager of Revenue/Chief Financial Officer

By A handwritten signature in black ink, appearing to read "Dennis J. Gallagher", written over a horizontal line.
Dennis J. Gallagher, Auditor



Contract Control Number: OEDEV-GE6A010-04

Vendor Name: ST CHARLES TOWN COMPANY THEATRE LLC

By: Charles H. Wolley Jr

Name: Charles H. Wolley Jr
(please print)

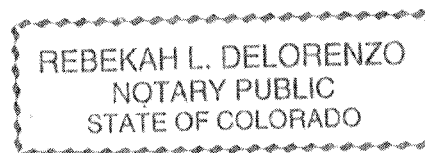
Title: MANAGER
(please print)

ATTEST: [if required]

By: Rebekah L. DeLorenzo

Name: REBEKAH L. DELORENZO
(please print)

Title: PROPERTY ADMINISTRATOR
(please print)



My Commission Expires 08/05/2013



EXHIBIT A

The following real estate located in the City and County of Denver, Colorado:

Parcel 1:

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 3, ROHLFING'S
SUBDIVISION, AND A STRIP OF LAND 70 FEET WIDE NORTH
AND SOUTH AND 125 FEET LONG EAST AND WEST LYING
IMMEDIATELY NORTH OF AND ADJOINING SAID LOT 1,
BLOCK 3,
ROHLFING'S SUBDIVISION,
CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

Purported address (for information purposes only): 2526 E. Colfax Avenue, Denver, Colorado

Parcel 2:

THE NORTH HALF OF LOT 33, AND LOTS 34 THROUGH 40,
INCLUSIVE, ALL IN BLOCK 3, ROHLFING'S SUBDIVISION,
AND A STRIP OF LAND 70 FEET WIDE NORTH AND SOUTH
AND 125 FEET LONG EAST AND WEST LYING
IMMEDIATELY NORTH OF SAID LOT 40, BLOCK 3,
ROHFLING'S SUBDIVISION,
CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

Purported address (for information purposes only): 1454, 1460 and 1480 Columbine Street, Denver,
Colorado

EXHIBIT B

The following real estate located in the City and County of Denver, Colorado:

Parcel 3:

Condominium Unit 2D, Equitable Building Condominiums, according to the Condominium Map thereof recorded August 9, 2001 under Reception No. 2001132744, and as amended in Instrument recorded July 24, 2002 under Reception No. 2002129880, and as defined and described in the Equitable Building Condominiums Condominium Declaration recorded August 9, 2001 under Reception No. 2001132745, and as amended in Instrument recorded July 24, 2002 under Reception No. 2002129881, City and County of Denver,

State of Colorado,