



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of Community Development

**LEGAL NOTICE
CITY OF NORTH ADAMS
REQUEST FOR PROPOSALS
Sale of Property & Reuse**

The City of North Adams requests proposals for the sale and reuse of real property located at: 109 - 113 Main Street, the Mohawk Theater (Assessor's Map 125, Lot 15, and Assessor's Map 126, Lots 32 and 32-B). This *Request for Proposals* (RFP) is issued in accordance with and subject to MGL Chapter 30B. Reuse of this property is to be for an approved use deemed to be in the best interest of the City of North Adams.

The RFP package, including submission requirements, may be obtained by writing to, or appearing at, the Office of Community Development (OCD), City Hall-10 Main Street, Room 107, North Adams, MA 01247 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Thursday, and on Fridays from 8:00 am to 1:00 pm, or by email request to Michael F. Nuvallie of the OCD at ocd@northadams-ma.gov during these same times. Proposals will be accepted at the OCD office on or before **Tuesday, July 12, 2022 at 11:00 am** after which time all shall be taken and publicly opened and identified as to its proposer in the OCD Conference Room # 110.

The RFP proposal response package shall be sealed and clearly marked:

Bid # NA-2022-006 Sale of Property and Reuse – Mohawk Theater

A bid bond or certified check must accompany the proposal payable to the City of North Adams in the amount of \$10,000.00.

The City of North Adams reserves the right to waive any informalities in submitted proposals. The City also reserves the right to accept, modify, or reject any proposal if such action is deemed to be in the best interest of the City.

The City of North Adams is an Equal Opportunity/Affirmative Action Employer.

Michael F. Nuvallie, Director OCD
Interim Procurement Officer

Publication dates: 06/01/2022 & 06/08/2022

Background Information

It is important for the potential proposer to fully understand the ownership that they will be receiving if they are successful in the acquisition of this real property. When the City of North Adams acquired ownership of the theater, it did not acquire 100% of the pre-existing conditions in terms of how the overall theater property had existed at that time. During the earlier process the front segment of the building was transformed into a condominium so that the front building upon Main Street could now be made of a “Unit A” and a “Unit B.” Thus, this sale includes the *condominium-ized* piece of Unit B along with its common stated areas and pursuant to the other restrictions and covenants as shown in the Mohawk Theater Condominiums Trust.

Additionally, all proposers must be cognizant of the fact that sale of this property is conditional upon the perpetual preservation of the marquee. As such, any proposals for the purchase of this property shall maintain the historical integrity of the marquee in perpetuity; those that do not will be considered non-responsive and disqualified from the selection process.

As a courtesy to the potential proposer, additional information is provided in **Exhibit I** attached hereto. This provides further detail as to the evolution of the ownership of the theater by the City of North Adams and the corresponding details that run with the property.

It is also important for any potential proposer to better understand the amount of construction that the City of North Adams has conducted to the facility under its ownership. Related information there can be found in **Exhibit II**. During the early phases of work, it was envisioned to put an addition on the rear side of the facility in order to enlarge for a bigger stage and to build other new interior complementary yet needed spaces. This was seen at that time as a needed and critical piece if there would be any chance in having a multipurpose venue. The information on this can be found in **Exhibit III**.

Lastly, the city administration wished to garner ideas and commentary from the general public as to what local residents wish to see. Two public input sessions were hosted in early May 2022. The summary of those sessions can be found in **Exhibit IV**.

General information

Introduction

This request for proposals (RFP) is issued pursuant to Chapter 30B of the Massachusetts General Laws. Terms used and conditions imposed in this RFP are not intended to imply or advantage a particular proposer nor are they to be construed as restrictive in any way. In responding to this RFP, proposers must follow the prescribed format and use the included forms (including reasonable facsimiles thereof). Failure to do so may disqualify the proposal from consideration. The City of North Adams intends to award the property based upon the quality and depth of the proposer’s prior experience, as well as the highest and best use proposed, provided that the proposed use is consistent with the goals and policies of the *North Adams Vision 2030* comprehensive plan (found at: www.northadams-ma.gov under the “How Do I” section) and the use regulations of the zoning district in which the property is situated.

Hereinafter the term “City” shall be understood to mean the City of North Adams, the term “proposer” shall be understood to mean an individual or entity submitting a proposal in response to this RFP, and the

term “recipient” shall be understood to mean the proposer selected by the City to be awarded the right to enter into a Purchase and Sale Agreement for the property.

The property will be available for public viewing by appointment only. Please contact Building Inspector William E. Meranti, at (413) 662-3000 extension 3260, or email bmeranti@northadams-ma.gov, to make an appointment. **In order to expedite consolidated viewing, the facility will be open for viewing, similar to an “Open House”, on Thursday, June 9, from 9:00 am through 3:30 pm.**

Property description

The City of North Adams requests proposals for the reuse of the Mohawk Theater property consisting of approximately .451 acres of property situated at 109-113 Main Street. The subject property includes a two-story brick construction theater containing an estimated 16,021 square feet of gross building area. A copy of the plot plan showing all parcels can be found in Attachment B.

The property has an assessed value of \$466,900 based on the FY’22 municipal assessment.

The property is located in the CBD (*Central Business District*) zoning district (see Appendix A of the City’s Zoning Ordinance for specific uses allowed therein, which can be found on the City’s website at: <https://www.northadams-ma.gov>). Proposals for uses prohibited in the CBD zoning district will be considered non-responsive.

Clarification of RFP requirements

Any questions concerning the content of this RFP must be submitted to the Director of the Office of Community Development by email at ocd@northadams-ma.gov pursuant to the RFP time line. Questions and answers shall be provided by the same staff person in writing, or his designee, to all interested proposers prior to the scheduled closing date for proposal submission. Please refer to the RFP timeline on the following page for specific dates.

RFP timeline

The following schedule will be adhered to as closely as possible. Proposer will be notified of any changes to this timeline.

RFP issue date	06-01-22
“Open House” for viewing	06-09-22; 9:00 to 3:30 pm
Deadline for questions	06-13-22
Deadline for responses	06-16-22
Due date for proposal submission and opening of proposals	07-12-22 at 11:00 am
Proposal review	07-12-22 – 07-27-22
Notification to successful proposer	07-28-22
Purchase and Sale Agreement Execution	08-01-22
Buyer’s Due Diligence Tasks	08-01-22 – 09-16-22
Closing Date on the Sale	09-30-22

Proposal submitti

Each proposer must furnish all requested information in the formats specified herein. Each proposal must include a transmittal letter containing the signature of an authorized representative of the proposer and identifying no more than two individuals authorized to negotiate and execute a contract with the City on behalf of the proposer. The transmittal letter should not exceed one page in length.

Promotional materials and other collateral material will not be considered.

Proposals must be submitted in a sealed packaged containing one original and three copies. Proposals must be labeled as follows:

Sale and Reuse of Property: **Mohawk Theater**
Proposer’s name:
Proposed purchase price: **(Relative to the proposed purchase price, the City has set a MINIMUM price of \$100,000; thus, any proposal less than that will be rejected)**

Proposals must be delivered no later than **11:00 am on Tuesday, July 12, 2022** to:

Office of Community Development
City Hall – 10 Main Street, Room 107
North Adams, MA 01247

Proposals must include the following completed and executed proposal forms, included as Attachment A to this proposal:

- Price proposal
- Tax compliance certification
- Non-collusion affidavit of prime proposer
- Non-discrimination affidavit

Price and intended use proposal

The proposer must propose a purchase price, to be paid in cash, certified check, or wire transfer of funds upon delivery of the real property deed. As stated above, the minimum offered purchase price shall be at least One hundred thousand and zero dollars (\$100,000).

The proposal also must include a description of no more than five pages (not including any attachments proposers feel may support or bolster their proposals) outlining the intended use of the property. Such description must be sufficiently detailed to ensure that the use intended by the proposer is consistent with the restrictions placed upon the property, if any.

All proposers must be cognizant of the fact that sale of this property is conditional upon the perpetual preservation of the marquee. As such, any proposals for the purchase of this property shall maintain the historical integrity of the marquee in perpetuity; those that do not will be considered non-responsive.

Proposal classification

For any proposal that the City determines as qualified to be selected, the proposer may be required to discuss, negotiate, or clarify its proposal with the City at any time during the procurement process.

Proposal evaluation

Proposals will be evaluated based on the most advantageous proposal received (as determined consonant with the guidelines established in this RFP) taking into consideration price, and that monetary value relative to the other evaluation criteria to that of the proposer's prior experience with related projects, the proposed use of the property, and its impact on the neighborhood, and its compatibility with the North Adams Vision 2030 comprehensive plan provided that the proposal is from a responsive and responsible proposer. Any proposal determined to be non-responsive to the RFP requirements may be disqualified without further evaluation. The City may determine that the non-responsiveness is not substantial and can be clarified as provided in the preceding paragraph. In such cases, the City may allow the proposer to make minor corrections which would not change the results of the evaluation.

Rejection of proposals

The City reserves the right to reject any and all proposals received in response to this RFP if such rejection is deemed to be in the best interest of the City. Furthermore, a proposal may be rejected if the proposer:

- fails to submit its proposal to the required address on or before the deadline date established herein; or
- fails to adhere to one or more of the provisions established in this RFP;
- fails to submit its proposal in the specified format or to supply the minimum information requested;
- fails to include with the proposal a bid deposit in the amount and form specified;
- misrepresents its products or provides demonstrably false information in its proposal, or fails to provide material information.

Developer selection

Based on the criteria stated hereinbefore, the City may select a recipient pursuant to the RFP timeline of events as aforementioned and issue notification to the recipient. The recipient shall execute a purchase and sale agreement with the City within ten (10) business days of the date of said notification. The City reserves the right to reject portions of the selected proposal while accepting others.

Proposer's examination of the property and the RFP

Each proposer must examine all information and materials contained in and accompanying this RFP. It is solely the responsibility of the proposer to investigate the condition and limitations of the property with due diligence. The proposer shall bear the full risk of any failure to adequately identify any restrictions or conditions associated with acquisition of the property. This includes, but is not limited to, all relevant laws and regulations of the Commonwealth of Massachusetts and the government of the United States.

Representations by the City of North Adams

The City of North Adams makes no representations, express or implied, as to the condition of the property, or its suitability for any particular use. The City of North Adams shall furnish a marketable title in the form of a **Release Deed**. If the City fails to do so, the developer, at its option, may withdraw the proposal without loss of the bid deposit.

Execution of agreement

Upon the acceptance of a proposal, the City will prepare and submit for signature to the recipient a purchase and sale agreement (the "Agreement"), as well as any other required contracts. In the event that the recipient fails, neglects, or refuses to execute the Agreement within ten (10) business days, after receiving a copy of the Agreement from the City, unless otherwise extended in writing by the City, the City may at its option terminate and cancel the proposed transaction.

The recipient needs to be prepared to identify and negotiate for their inclusion into said agreement their "Buyer's Due Diligence Tasks" that they wish to accomplish so that they can make a more informed decision to continue with said purchase. Examples of these tasks may be the hiring of a contractor or inspector to ascertain building conditions, a licensed site professional to ascertain soil and/or underlying qualities, etc.

Any contract to be entered into by the City and the recipient pursuant to this RFP shall incorporate by reference all of the information presented in or with this RFP and the recipient's response thereto. The contract shall be executed by the Mayor on behalf of the City of North Adams and by an authorized representative of the recipient.

Assignment

Assignment of the recipient's rights and interests in any contract resulting from this RFP to any third party is prohibited and shall not be recognized by the City unless approved in advance in writing.

Confidentiality

Under Massachusetts General Laws, the City cannot ensure the confidentiality of any materials or information submitted by a proposer in response to this RFP. Any confidential information submitted shall be submitted at the proposer's own risk.

Rights to submitted materials

All proposals, response inquiries, or correspondence relating to or in reference to this RFP, as well as all reports, charts, displays, schedules, exhibits, and other documentation submitted by proposers shall become the property of the City upon receipt.

Statement of time

Time, when stated as a number of days, unless otherwise noted, shall include Sundays and Saturdays, but shall exclude legal holidays.

Non-Discrimination in Employment and Affirmative Action

The proposer shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. The proposer shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, or for exercising any rights afforded by law.

Force Majeure

Neither party will be liable to the other for any failure or delay in rendering performance which arises out of causes beyond its control and without its fault or negligence. Such causes may include but are not limited to acts of god or the public enemy as well as unusually severe weather. Dates or times of performance will be extended in response to delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

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Proposal narrative (not to exceed five pages not including any attachments the proposer may feel support or bolster their proposal)

The proposal narrative must include a response to each of the following items. Additional information may be submitted following the required response.

1. Describe the proposed use of the site and the public benefits the City may expect to result from this use.
2. Describe any proposed improvements or investments to be made on the site.
3. Describe the proposed schedule for improvements and investments.
4. Describe the proposer's prior experience, including the last (up to) three projects undertaken thereby of a similar nature.
5. Describe how the proposed project will be financed, including descriptions of sources and uses of funds (i.e. letters of credit, list of donors, other applicable banking/other information).

Attachment A

Required RFP Forms

The four forms listed below and as enclosed in this attachment must be completed and executed by the responsible party of the proposer and included with the submitted proposal:

- Price proposal
- Tax compliance certification
- Non-collusion affidavit of prime proposer
- Non-discrimination affidavit

REQUEST FOR PROPOSALS NA-2022-006
Sale and Reuse of Property – Mohawk Theater

Price proposal



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of Community Development, Compliance and Procurement Officer

The proposer offers the following purchase price, payable in cash, certified check, or wire transfer of funds upon delivery of the deed to the parcel designated as Map 125, Lot 15, Map 126, Lot 32 and Map 126, Lot 32-B in the City of North Adams:

Proposed price \$ _____

(_____)
Repeat in words the total amount

[NOTE: The minimum proposed price must not be less than \$100,000]

Proposer's name _____

Contact person _____

Address _____

City, State ZIP _____

Telephone _____

Email _____

Signature

Date

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Tax compliance certification



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of Community Development, Compliance and Procurement Officer

To: Prospective bidders; providers of goods, services, real estate; licensees and contractors
Re: Tax compliance certification

Chapter 233 (Sections 35 and 36) of the Acts and Resolves of 1983 enacted the Revenue Enforcement and Protection Program, effective July 1, 1983. One aspect of this law requires providers of goods and/or services to attest under the penalty of perjury that they are in compliance with all laws of the Commonwealth of Massachusetts relating to taxes.

To comply with this requirement, please sign the form below and return it with the proposal package.

Any person failing to sign the attestation clause shall not be allowed to obtain, renew, or extend a license, permit, or contract.

Pursuant to MGL Chapter 62C, Section 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I have filed all state tax returns and paid all state taxes required under the law.

Corporate name _____

SSN or FID _____

Corporate officer signature

Date

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Non-collusion affidavit of prime proposer



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of Community Development, Compliance and Procurement Officer

Project: Sale and Reuse of Property – Mohawk Theater
(Identified as Map 125, Lot 15, Map 126, Lots 32 and 32-B)
Commonwealth of Massachusetts
County of Berkshire

_____, being first duly sworn
Bidder's name

(1) They are

_____ of _____
The bidder that has submitted the attached bid

- (2) They are fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid.
- (3) Such bid is genuine and is not a collusive or sham bid.
- (4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including the undersigned, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract, or had in any manner, directly or indirectly, sought by agreement or collusion or communication or convergence with any other bidder, to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the owner or any person interested in the proposed contract; and
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including the undersigned.

Signature

Title

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Subscribed and sworn to before me this _____ day of _____, 20____

Notary public

My commission expires

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Non-discrimination affidavit



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of Community Development, Compliance and Procurement Officer

Project: Sale and Reuse of Property – Mohawk Theater
(Identified as Maps 125, Lot 15; 126, Lot 32; and 126, Lot 32-B)

Commonwealth of Massachusetts
County of Berkshire

The undersigned being duly sworn, deposes and states that they are the sole owner, partner, president, treasurer or other duly authorized agent or official of

Proposer's name _____
Address _____
City, State ZIP _____
Telephone _____
SSN or FID _____

and certifies under penalty of perjury that to the best of their knowledge and belief, said bidder has not, either directly or indirectly, discriminated against any employee or applicant for employment because of their race, color, religion, national origin, sex, sexual orientation, age, mental or physical disability. Additionally, bidder has complied with all provisions and requirements of the Equal Opportunity, Anti-discrimination and Affirmative Action programs.

Signed under penalties of perjury.

Signature _____ Title _____
On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Subscribed and sworn to before me this _____ day of _____, 20____
Notary public _____ My commission expires _____

Plot Plan

[illegible]

Attachment C

Sample Purchase and Sale Agreement

Note: The enclosed Purchase and Sale Agreement, along with its Terms and Conditions, are the documents that will be required to be executed by the recipient, and are provided as a courtesy to prospective proposers.

Please note also that the recipient will be required to execute the “Mandatory Disclosure of Beneficial Interests” form pursuant to MGL, Chapter 7C, section 38, which requires any party, whether upon the sale or a purchase of a piece of real estate from a municipality, to disclose their beneficial interests regardless of the cost or value in said transaction to the State Division of Capital Asset Management and Maintenance (DCAMM).

PURCHASE AND SALE AGREEMENT

1. Information and Definitions.

(a) DATE OF AGREEMENT: _____, 2022

(b) PREMISES: 109-113 Main Street, North Adams, MA 01247
Map 126, Lots 32 & 32-B, and Map 125, Lot 15

(c) SELLER: **City of North Adams, Massachusetts**
Address: OCD, City Hall, 10 Main Street, North Adams, MA 01247

(d) SELLER'S Attorney: Lee S. Smith, Esq.
KP Law, P.C.
Address: 101 Arch Street, 12th Floor
Boston, MA 02110

Phone: 617-654-1809

E-mail address: lsmith@k-plaw.com

(e) BUYER:

Address:

BUYER'S Attorney:

Phone:

E-Mail Address:

(f) PURCHASE PRICE: The agreed purchase price for the Premises is
_____ Dollars
(\$XXX,000.00) which is to be paid at the time of delivery
of the deed by certified or bank check or by wire transfer.

(g) DEPOSIT: _____ Dollars (\$XX,000.00) to be held in
escrow by KP Law, P.C.

(h) CLOSING DATE: _____, 2022. Time is of the essence.

(i) PLACE: North Adams City Hall, 10 Main Street, North Adams, or a
closing by mail, by mutual agreement of the parties.

(j) TITLE: Release Deed

(k) BROKER: None

2. Premises; Buildings, Structures, Improvements, Fixtures. Included in the sale as part of said Premises are the buildings and improvements thereon, if any. All personal property of the SELLER shall be removed from the Premises at least two (2) days before the Closing.

3. Title Deed. The Premises are to be conveyed by a good and sufficient release deed running to BUYER.

The deed to the Premises shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then-current year as are not due and payable on the date of the delivery of such deed, except as set forth herein;
- (c) Any liens for municipal betterments assessed after the date of this Agreement; and
- (d) Easements, restrictions and reservations of record, if any.

4. Deed/Plans. SELLER shall prepare the deed and all other Closing Documents pertaining to SELLER. BUYER shall prepare all other Closing Documents pertaining to BUYER. If said deed refers to a plan necessary to be recorded therewith BUYER shall deliver such plan with the deed in a form adequate for recording or registration.

5. Closing Costs. At the closing, SELLER shall pay the cost of obtaining and recording and/or filing such instruments as are necessary to establish SELLER'S good and clear record and marketable title and SELLER'S authority to convey same and any other usual and customary closing costs and expenses incurred by SELLER. At the closing, BUYER shall pay the recording and filing fees incurred in connection with recording the deed and such instruments as are necessary to establish BUYER'S acceptance of the deed and authority to so accept, the cost and expenses of any commitment and the title insurance policies issued pursuant to the commitment, if any, and the fees and expenses of BUYER'S attorneys and any other usual and customary closing costs and expenses incurred by BUYER with regard to the purchase. SELLER shall be responsible for his attorney's fees.

6. Registered Title. In addition to the foregoing, if the title to said Premises is registered, said deed shall be in a form sufficient to entitle BUYER to a certificate of title of said Premises, and SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such certificate of title.

7. Possession and Control of Premises. Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the

deed, said Premises to be then (a) in the same condition as they are in as of the date of this agreement, excepting only reasonable use and wear thereof, and (b) not in violation of zoning laws, and (c) in compliance with provisions of any instrument referred to in Section 3 hereof.

8. Right to Inspect. BUYER shall be entitled to inspect said Premises, upon at least forty-eight (48) hours prior notice to SELLER, which notice may be verbal notice, prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Agreement. Any such inspection shall not interfere with the current tenant's use and enjoyment of the Premises (if any).
9. Extension to Perfect Title or Make Premises Conform. If SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then SELLER shall use reasonable efforts to remove any defects in title (at SELLER'S sole expense), or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for thirty (30) calendar days or such time as the BUYER and SELLER mutually agree.
10. Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time BUYER and SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.
11. BUYER'S Election to Accept Title. If SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then BUYER shall have the election, at either the original or any extended time for performance, to accept such title as SELLER can deliver to the said Premises in their then condition and to pay therefor the purchase price, without deduction, in which case SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then SELLER shall, unless SELLER has previously restored the Premises to their former condition, either:
 - (a) pay over or assign to BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by SELLER for any partial restoration, or
 - (b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to their former condition or to be so paid over or assigned, give to BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or

recoverable and retained by the holder of the said mortgage less any amount reasonably expended by SELLER for any partial restoration.

If BUYER declines to so elect to accept such title as SELLER can deliver to the said Premises in their then condition and to pay therefor the purchase price, without deduction, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties.

12. Acceptance of Deed. The acceptance and recording of the deed to the Premises by BUYER shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
13. Insurance. Until the delivery of the deed, SELLER shall maintain insurance on the Premises as it presently has.
14. Use of Money to Clear Title. To enable SELLER to make conveyance as herein provided, SELLER may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, if an institutional mortgage only, within a reasonable time thereafter in accordance with customary Massachusetts conveyancing practices.
15. Adjustments. A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, §63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by BUYER at the time of delivery of the deed. Said payment shall be calculated based upon the sales price. Buyer's obligation to make payments in lieu of taxes shall terminate upon the effective date of the assessment and taxation of the Premises upon the Buyer as taxable real estate. All other adjustments, including any outstanding charges for water, sewer, refuse or similar applicable charges shall be made as of the Closing Date.
16. BUYER'S Contingencies. BUYER'S obligation to perform under this Agreement is subject to the following conditions, at BUYER'S option:
 - (a) A satisfactory review and report of the environmental condition of the Premises and title examination not later than _____, 2022; and
 - (b) BUYER and SELLER shall have complied with the disclosure provisions of G.L. c.7C, §38. SELLER hereby agrees to execute a "Disclosure of Beneficial Interests in Real Property Transaction" certificate as required by G.L.c.7C, §38;

In the event SELLER grants the BUYER and its agents access to the property before closing, BUYER hereby indemnifies and holds SELLER harmless from and against all injuries, claims, loss, demands, causes and/or actions, costs and expenses, liability and damages, including reasonable attorney's fees, caused or in any way related to BUYER or BUYERS'

designees, agents, employees, contractors, and licensees entry on the property, and under no circumstances shall BUYER and/or BUYERS' agent be allowed to make any sort of alterations to the Property during said grant of access. This indemnity shall survive closing and delivery of the deed hereunder or termination of this Agreement.

17. Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:
- (a) No building, structure or improvement of any kind, including driveways and utilities, belonging to any person or entity encroaches upon or under the Premises from other premises;
 - (b) Title to the Premises is insurable, for the benefit of BUYER, by a title insurance company acceptable to BUYER, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use; and
 - (c) All means of access to the Premises shall be located completely within the boundary lines of said Premises and shall not encroach upon or under property of any other person or entity.
18. Closing Documents; Affidavits, etc. BUYER and SELLER each agree to execute and provide such additional and further instruments and documents, including without limitation, authority documents, as may be consistent with this Agreement and customarily and reasonably required by SELLER as a Massachusetts municipal corporation and by BUYER and/or BUYER'S title insurance company to complete the transactions described in this Agreement.
19. Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.
20. Acceptance of Premises; Inspection Rights. AS-IS Condition. BUYER agrees that if it purchases the Premises pursuant to the terms hereof, it shall have accepted the Premises in their as-is condition, without any representations or warranties other than are set forth herein. BUYER shall have the right to inspect the Premises in accordance with the provisions hereof.
21. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: when delivered by hand, sent by registered or certified mail, return receipt requested, postage prepaid; sent by express courier service such as Federal Express, or upon confirmed facsimile transmission (provided such facsimile notice is promptly followed by

other acceptable means of sending notice), to the other party with a copy to the other party's attorney at the addresses set forth in Section 1. Notices sent by email shall be deemed received only upon receipt of an acknowledging email reply to the sender from the recipient.

22. Condition of Premises at Closing. Except as herein provided, SELLER agrees to deliver the Premises at the time of delivery of SELLER'S deed in a condition substantially similar to its condition at the time of the signing of this Agreement, removing all of SELLER'S personal property therefrom which is not being sold to BUYER, or left for its benefit, and consented to by it.
23. Default. In the event that SELLER fails to sell the Premises and fulfill the obligations set forth herein, the BUYER'S sole and exclusive remedy shall be to terminate this Agreement with written notice to the SELLER, whereupon the parties shall have no further obligations under this Agreement except for those obligations, if any, that are expressly stated herein to survive said termination of this Agreement.

In the event that BUYER fails to purchase the Premises and fulfill the obligations set forth herein, the SELLER'S sole and exclusive remedy shall be to retain the BUYER'S deposit as liquidated damages and to terminate this Agreement with written notice to the SELLER, whereupon the parties shall have no further obligations under this Agreement except for those obligations, if any, that are expressly stated herein to survive said termination of this Agreement.

24. Brokers. BUYER and SELLER each represent and warrant to the other that each has not contacted any real estate broker other than (NONE) in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker, and shall defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this section shall survive delivery of the deed.
25. Extensions. BUYER and SELLER hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile or scanned signatures shall be construed as original.
26. Casualty, Condemnation. Notwithstanding anything herein to the contrary, in the event of any damage to or destruction of the Premises or any part thereof by fire, vandalism or other casualty, or in the event of a taking of all or part of the Premises by eminent domain by any entity, then at BUYER'S sole and absolute discretion, this Agreement may be terminated,

without recourse against the parties. All risk of loss shall remain with SELLER until the delivery and recording of the deed.

27. Recording of this Agreement. In the event the BUYER records a copy of the Purchase and Sale Agreement, SELLER may at SELLER'S option declare this Agreement null and void and BUYER shall be deemed to be in default of its obligations hereunder.
28. Errors. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within six (6) months of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.
29. Construction of Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both SELLER and BUYER. Any claims arising under this Agreement shall be brought in the courts of the Commonwealth of Massachusetts.
30. Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.
31. Prior Agreements. The Request for Proposals (NA-2022-006) and the BUYER'S response thereto is incorporated herein by reference. All other prior agreements of the parties are hereby superseded and shall have no further force and effect.
32. Governing Law. This Agreement and all Exhibits thereto shall be governed in accordance with Massachusetts law, to whose jurisdictions the parties hereto submit.

(Remainder of page intentionally left blank. Signature pages follow.)

In Witness whereof, the parties hereto sign this Purchase and Sale Agreement under seal as of this

_____ day of _____, 2022.

SELLER:
CITY OF NORTH ADAMS

BUYER

By: Jennifer A. Macksey, Mayor

By:

Approved as to form:

City Solicitor

Lee S. Smith, Esq.
KP Law, P.C.

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Exhibit I

Mohawk Theater Recent Ownership Timeline

It is important for the reader to discern the actual and recent ownership of the theater property in terms of how the City of North Adams acquired its as a municipality, and in relation to what it actually being disposed of through this RFP. Albeit that the theater is thought of as being within one building, actual ownership over the years had always existed within two buildings. The main part of the theater with its seating is located in the rear parcel or its northerly segment. The marquee and entry lobby is located in the front building on Main Street, or its southerly piece. When the theater was proposed to be built in 1938, there was a lot of opposition to the theater being built at this location, which oddly proposed an initial entrance out to Eagle Street, which is the nearest side street that intersects with Main Street. In fact, the original construction documents were entitled, "Public Hall for North Adams Theater Company." It is unknown as to when this split-ownership situation started but it was reality for a long time. This is no longer the case as explained herein.

The auditorium portion of the facility, or its northerly segment, was under one distinct owner. This was the North County Community Development Corporation (NCCDC). The NCCDC purchased this portion of the facility in 1992 from Atlantic Productions, Inc. They tried to re-develop the theater and were unsuccessful. On September 30, 1996, they sold their interest to the City of North Adams for \$1.00 as evidenced in Book 925, Page 699 at the Northern Berkshire Registry of Deeds (hereinafter known as the NBR-DEEDS). A copy of this is attached hereto as seen in Attachment A.

The southerly segment of the facility that transcends from the common party wall to what was described above is reflective of the two-story building portion that stops upon its main frontage on Main Street. This part the building along Main Street (109-115 Main Street) is where the theater's marquee is erected at the second floor level, and is the main hallway from the street into the theater that terminates near the lobby area. This was owned the Moulton's, a local family who still owns the successful downtown business known as The Spectacle Shoppe. This business was and still is part of this southerly segment. On June 17, 2002, Carolyn A. Moulton transferred this ownership to The Moulton Family II Nominee Trust, whereby she and her late husband, Robert R. Moulton, Sr. served as its Trustees and thus own the property as Trustees and not as individuals. A copy of this transfer is evidenced in the NBR-DEEDS in Book 1063, Page 391 that can be seen herein in Attachment B.

With the City of North Adams desire in acquiring full ownership of the segment as owned by the Moulton Trust so that it could forge ahead with its own theater redevelopment plans, especially seeing how it had secured ownership of the other segment in 1996 as previously described, this is when newer ownership changes came into play. The Mouton Trust did not wish to sell its entire ownership to the city at that time because its local business, the Spectacle Shoppe that is located on Main Street right next to the main entry to the theater, needed to be sustained. This is a family business with a well-established name and one in which they did not desire to be relocated if in fact that had sold their entire interest. Thus, on June 13, 2002, The Moulton

Family II Nominee Trust decided to change the ownership of this property into a condominium type of ownership so that it could sell the portion that it did not desire to retain, and thereby allowing them at the same time in keeping that part of the property in which their business was.

As recorded in Book 1063, Page 394 of the NBR-DEEDS on June 13, 2002, it was created by the aforementioned Trust a new Master Deed known as the Mohawk Theater Condominiums Trust. A copy of this Deed can be seen herein as Attachment C. This effectively created two units of real property as shown in that Deed as Unit A and Unit B. Unit A, further described in Exhibit B to the Master Deed that can be seen in Attachment C hereto, reveals Unit A in having a formal address of 115 Main Street, being comprised of 3,753 SF with a total of seven (7) rooms and including the exterior of the Mohawk Theater Building. In the same descriptive schedule, Unit B is described with a formal address of 109-113 Main Street, being comprised of eleven (11) rooms and including the exterior of the Mohawk Theater Building. There were also limited common areas as described in that new Master Deed that was reflective of "stairs." Thus, Unit A was created to be representative of 25% of the "Interest in Common Elements", and Unit B being 75% of the same.

The Master Deed also stated the Trustees for this new Trust as being Robert R. Moulton, Jr. representing the 25% of the overall ownership ("Unit A"), and Michael F. Nuvallie representing the remaining 75% ("Unit B") in order to represent the City of North Adams' interests. Since that time the latter Trustee had resigned and at that same time a successor Trustee was named. Richard J. Alcombright, at that time the mayor of North Adams, was officially named as the new Trustee. Both events were done on November 18, 2011, with the successor appointment shown in the NBR-DEEDS in Book 1460, Page 833, and the concurrent resignation in Book 1460, Page 832. This can be seen herein in Attachment D.

Upon the completion of the new Master Deed, the Mohawk Theater Condominiums Trust was in the position it needed to be in for its next two transactions. On June 17, 2002, The Moulton Family II Nominee Trust sold the Unit B portion (or the 75% segment as aforementioned situate at 109-113 Main Street) to the City of North Adams for \$205,000.00. This was subject to an undivided 25% interest appertaining to the said Unit in the common areas and facilities of said Condominium and further subject to and with the benefits to its Master Deed. This is recorded in the NBR-DEEDS in Book 1063, Page 421 that can be seen herein in Attachment E. The conclusion of this transaction gave the City of North Adams the most optimum site control of the remaining theater property for future development excepting from the property what was retained on Main Street for the Moulton's Spectacle Shoppe and excepting from it the remaining covenants and restrictions existing in the Mohawk Theater Condominiums Trust pursuant to its Master Deed.

Concurrent with the above transaction on the same day, The Moulton Family II Nominee Trust sold to their son, Robert R. Moulton, Jr. the Unit A portion (or the 25% segment as aforementioned situate at 115 Main Street) for \$70,000.00. This was subject to an undivided 25% interest appertaining to the said Unit in the common areas and facilities of said Condominium and further subject to and with the benefits to its Master Deed. This is recorded in the NBR-DEEDS in Book 1063, Page 426 that can also be seen herein in Attachment F. The conclusion of this transaction allowed the Moulton's the ability in keeping their eye care

business although excepting from it the same remaining covenants and restrictions as alluded to above.

The conclusion here is that the sale of all of the City of North Adams' interests in real property as evidenced within this RFP will still be subject to the covenants and restrictions of the Mohawk Theater Condominiums Trust through its Master Deed that was created on June 13, 2002. A person will be obligated to be appointed as a Trustee to the Mohawk Theater Condominiums Trust so that the common areas as identified in the Master Deed can be adequately represented.

ATTACHMENT A
BOOK 925, PAGE 699



1996 00006454
Bk: 925 Pg: 0696 Doc: DEED
Page 1 of 4 11/13/1996 09:08AM

BK 925 PG 696
11/13/96 09:08 DOC: 6454

Location of parcel. Eagle St, North Adams, MA

NORTH COUNTY COMMUNITY DEVELOPMENT CORPORATION, formerly known as NORTH ADAMS COMMUNITY DEVELOPMENT CORPORATION, a Massachusetts non-profit corporation with its principal offices situate at 85 Main Street, North Adams, Berkshire County, Massachusetts, in consideration of the sum of ONE (1) DOLLAR paid, grants to CITY OF NORTH ADAMS, a Massachusetts municipal corporation, with its principal offices situate at 10 Main Street, North Adams, Berkshire County, Massachusetts, with QUITCLAIM COVENANTS, three parcels of land, together with any and all buildings thereon, situate in North Adams, Berkshire County, Massachusetts, bounded and described as follows, viz:

Parcel #1

"All that parcel of land situated Westerly of Eagle Street, North Adams, Mass., bounded and described as follows, to wit:

"Beginning at the North-West corner of land of Issac and Charles Kronick as shown on a plan recorded as Rolled Map No. 64 with the Northern Berkshire Registry of Deeds and entitled "Plan of Property for the North Adams Theatre Co., North Adams, Mass., dated November, 1937 and made by W. N. Tuller, C.E." Thence N 52° 24' W 44.84 feet along land of the Jayne estate; thence N 52° 57' W 72.35 feet along land of the Jayne estate and land of the Nichols estate; thence S 28° 00' W 75.43 feet along land of the North Adams Realty Company; thence S 61° 35' E 2.18 feet along land of the North Adams Realty Company; thence S 28° 25' W 27.9 feet along land of the North Adams Realty Company; thence S 62° 29' E 0.70 feet along land of the North Adams Realty Company; thence S 55° 55' E 54.04 feet along land of Stephen Anes; thence S 33° 52' W 5.36 feet along land of Stephen Anes; thence S 55° 20' E 35.72 feet along land of Mary Corsiglia; thence N 34° 40' E 58.61 feet along Lot D on said plan to the Southwest corner of land of Stephen Anes;

thence N 39° 15' E 17.77 feet along land of Stephen Anes; thence S 51° 45' 10.21 feet along land of Stephen Anes; thence N 37° 46' E 26.18 feet along land of Issac and Charles Kronick to the place of beginning. Being shown as Lot C on said plan.

"Also granting to the grantees, their successors or assigns, a Right of Way about 8 feet from the above described land to Eagle Street, the North line of said Right of Way being the South line of land of Stephen Anes.

Parcel #2

"Also that parcel of land situated Westerly of Eagle Street, in said North Adams, bounded and described as follows, to wit:-

"Beginning at the Southwesterly corner of Lot B and the Southeasterly corner of land now or formerly of the W.J. Nichols Estate, as shown on said plan; thence Northerly along the Easterly line of land of the said Nichols Estate about thirty-five (35) feet; thence Easterly along the Center of a twelve (12) foot right of way, thirty-four (34) feet, thence Southerly at right angles to the said Northerly line of lot B about thirty-five (35) feet to the Northerly line of land now or formerly of the H.A. Sherman Estate; thence Westerly along the Northerly line of land of the said Sherman Estate; about thirty-two (32) feet to the place of beginning. Being Lot B on the above mentioned plan.

"Subject however to a right of way six (6) feet wide over the northerly portion of the above-described land as shown on said plan."

Parcel #1

"Another parcel of land situated west of Eagle Street and Southerly of Center street, North Adams, Massachusetts, bounded and described as follows:

"NORTHWESTERLY by land now or formerly of North Adams, Realty Trust, approximately thirty (30) feet;

"NORTHEASTERLY by land now or formerly of Francis E. Nichols, approximately forty-two (42) feet;

"SOUTHEASTERLY by Lot B on said plan, approximately twenty-nine (29) feet; and

"SOUTHWESTERLY by Lot C on said plan, approximately forty-one and 75/100 (41.75) feet.

"Being the southeasterly portion of Lot A shown on said plan, and being that portion of Lot A reserved by North Adams Theatre Co. after the deed from said North Adams Theatre Co. to North Adams Realty Trust dated January 23, 1939 and recorded with said Northern Berkshire Registry of Deeds in Book 430, Page 141 and the deed from said North Adams Theatre Co. to Francis E. Nichols dated March 2, 1939 and recorded with said Northern Berkshire Registry of Deeds in Book 426, Page 145.

"Together with an easement more particularly described in deed of Atlantic Productions, Inc. to David B. Carter, et al, dated April 13, 1988, and recorded with said Registry of Deeds in Book 786, Page 695.

"Subject to all easements and restrictions of record to the extent still in force and effect, including, without restriction, the easement granted by E. M. Lowe's Theatres, Inc. to the City of North Adams, by instrument dated July 17, 1979, and recorded with said Registry of Deeds in Book 693, Page 1116."

Together with all and any easements, rights, rights-of-way, or other interests in, to, on, or under any land, highway, street, road, right-of-way, entrance, or avenue upon all property in front of, abutting, or adjoining the premises; and all other easements, rights, rights-of-way and appurtenances to the premises, however acquired.

Meaning and intending to convey, and hereby expressly conveying, all and singular, the same premises conveyed to the Grantor herein by deed of Atlantic Productions, Inc. dated November 4, 1992 and recorded December 24, 1992 at the Northern Berkshire Registry of Deeds, Adams, Massachusetts in Book 856, Page 255 etc.

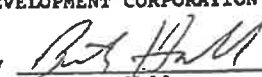
This property does not constitute all or substantially all of the property located within Massachusetts of the Grantor.

IN WITNESS WHEREOF, NORTH COUNTY COMMUNITY DEVELOPMENT CORPORATION, formerly known as NORTH ADAMS COMMUNITY DEVELOPMENT CORPORATION, has caused this instrument to be signed, sealed and delivered in its name and behalf by PETER A. HALL, its EXECUTIVE DIRECTOR, this 30th day of September 1996.

In the presence of:

NORTH COUNTY COMMUNITY
DEVELOPMENT CORPORATION



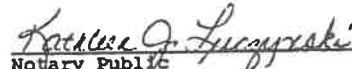
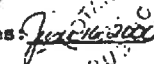
By 
Peter A. Hall
its Executive Director

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

September 30th, 1996

Then personally appeared the above-named PETER A. HALL, as Executive Director aforesaid, and acknowledged the foregoing instrument to be the free act and deed of NORTH COUNTY COMMUNITY DEVELOPMENT CORPORATION, before me


Notary Public
My commission expires: 

091096.DOC/dlr

ATTACHMENT B

BOOK 1063, PAGE 391

QUITCLAIM DEED

I, CAROLYN A. MOULTON, of North Adams, Berkshire County, Commonwealth of Massachusetts, for consideration paid in the amount of One (\$1.00) Dollar, grant to ROBERT R. MOULTON, SR. AND CAROLYN A. MOULTON, TRUSTEES of the MOULTON FAMILY II NOMINEE TRUST, under Declaration of Trust dated May 2, 1996, and recorded with the Berkshire County (Northern District) Registry of Deeds in Book 915, Page 209, whose tax mailing address is 1191 Massachusetts Avenue, North Adams, Massachusetts, with QUITCLAIM COVENANTS, the land with the buildings thereon located in said 109- 115 Main Street, North Adams, Massachusetts, bounded and described as follows:

See Attached Schedule "A"

SCHEDULE "A"

"Commencing on Main Street at the south-east corner of land formerly owned by Dr. N.S. Babbitt, now owned by North Adams Realty Trust and three inches west of the wall of the building standing on the land herein conveyed, thence running northerly parallel to said wall and three inches therefrom on the line between said estate and land of said North Adams Realty Trust about One Hundred Twenty-five (125) feet to the south line of land formerly owned by John Lynch, now owned by H. A. Sherman; thence easterly on said Sherman's south line about Fifty-three (53) feet and Five (5) inches; thence southerly on a line parallel with the west line of the estate herein conveyed about Five (5) feet and Three (3) inches to land formerly of Clark and Olds; thence southerly in line with last mentioned line of said Clark and Olds west line about Twenty (20) feet to the building now owned by Favreau Brothers; thence westerly along the northerly side of said building of Favreau Brothers to the north-west corner thereof; thence southerly along the westerly end of said building of Favreau Brothers to the south-west corner thereof; thence easterly along the southerly side of said building of Favreau Brothers to land now or formerly of Maturin Ballou or Rice Brothers; thence southerly along the westerly line of lands now or formerly of Maturin Ballou and Rice Brothers in a straight line to Main Street; thence westerly on north line of said Main Street to the place of beginning or however otherwise said premises may be bounded, measured or described."

The said parcels are conveyed subject to all easements and restrictions of record to the extent still in force and effect, including, without restriction, the easement granted by E. M. Laew's Theatres, Inc. to the City of North Adams, by instrument dated July 25, 1979 and recorded with said Northern Berkshire Registry of Deeds in Book 693, Page 1115, insofar as same may affect the granted premises.

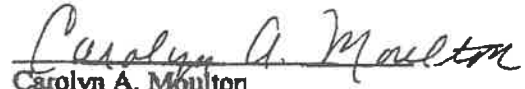
Meaning and intending to convey and hereby expressly conveying, all and singular, the same premises conveyed to Cornelia H. Maniatty, Simeon M. Avdoulos and William M. Avdoulos by deed of Helen M. Avdoulos, dated March 21, 1979, recorded with Northern Berkshire Registry of Deeds in Book 691, Page 277, to which deed and the record thereof reference is always to be had.

The said Simeon M. Avdoulos died on October 7, 1985 and his interest in the above-described real estate descended to his surviving spouse, Demetra N. Avdoulos, and his only surviving child Michael S. Avdoulos. See Berkshire County Probate Court records, Docket #86P0523-81.

This deed represents an undivided one-half (1/2) interest described in deed of Arthur D. Cady, Executor u/w of Emily B. Whipple to Steven J. Anes and Michael V. Avdoulos by deed dated January 1, 1922, recorded with said Registry in Book 357, Page 537, and the same interest devised to Helen M. Avdoulos u/w of Michael Avdoulos a/k/a whose estate appears as Docket #72514 in the Berkshire County Probate Court records in Pittsfield, Massachusetts.

BK 1063 PG 393

EXECUTED as an instrument under seal this 13th day of June, 2002.

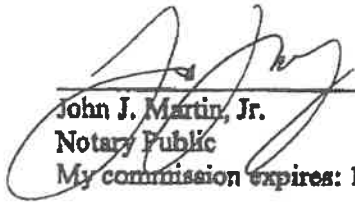

Carolyn A. Moulton

THE COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

June 13, 2002

Then personally appeared the above-named Carolyn A. Moulton and acknowledged the foregoing instrument to be her free act and deed, before me


John J. Martin, Jr.
Notary Public
My commission expires: 10/18/07

ATTACHMENT C

BOOK 1063, PAGE 394

We, ROBERT R. MOULTON, SR. and CAROLYN A. MOULTON, as Trustees of the Moulton Family II Nominee Trust, under Declaration of Trust dated May 2, 1996 and recorded with the Northern Berkshire Registry of Deeds, at Adams, Massachusetts, in Book 915, Page 209, being the owners, as Trustees aforesaid, of a certain parcel of land in North Adams, Massachusetts, with the buildings thereon numbered 109-115^{MA-10357} and more particularly described in deed of Robert R. Moulton, Sr., to Robert R. Moulton, Sr., and Carolyn A. Moulton, Trustees of The Moulton Family II Nominee Trust dated May 2, 1996 and recorded with the Northern Berkshire Registry of Deeds on May 17, 1996 in Book 915, Page 216, does hereby submit said land and buildings, structures and improvements existing or to be built thereon, to the provisions of Chapter 183A of the General Laws of Massachusetts, for the purpose of creating a condominium to be known as MOHAWK THEATER CONDOMINIUMS TRUST, to be governed by and subject to the provisions of said Chapter 183A, upon the following terms and conditions:

1. The building containing all the units of the condominium is a two story, wood-frame building with brick facing, as depicted on a plan by James E. Morrissey, Tessier Associates, Inc., a registered architect dated June 12, 2002, which plan is recorded herewith.
2. The condominium consists of two (2) units labeled Unit A and Unit B, the location, layout, area, number of rooms, immediate common area to which they have access, and their percentage interest in the common areas and facilities, are set forth on Exhibit B attached hereto.
3. The common area consists of the land area not occupied by any part of the building or structures, (except for a stairway which is appurtenant to the second floor area of Unit B, as shown on the Plan next hereinafter enumerated) which are set forth in the definition of "common areas" in section 1 of said Chapter 183A. Also included are all utility lines contained in the common areas or in any unit, except those that exclusively serve individual units and are located within such units. All units have the right to use all the common areas, and each unit shall be subject to an easement to permit the maintenance therein of such of the common facilities as are located in such unit.
4. There is a limited common areas attached to Unit B, as set forth in Exhibit B, which is designed for the exclusive use of the owner of such unit. Such limited common area is shown on the plan of the condominium as "stairs" extending from the ground or first floor to the second floor.
5. In the event of any encroachment of a unit or common area or utility line onto a common area or another unit, due to settling of the building or alterations or repairs or rebuilding of the condominium after damage by a casualty, an easement for such encroachment and for the maintenance thereof shall exist so long as the building is standing.

6. The condominium units are intended for dwelling purposes and commercial purposes as, permitted by the Zoning Ordinance of the City of North Adams.

7. The unit owners will manage the condominium through an association know as ____ Mohawk Theatre Condominiums Trust, under a declaration of trust of even date and recorded herewith. The mailing address of the Trust is Office of Community Development, City Hall, 10 Main Street, North Adams, Massachusetts 01247. The Trust has adopted by-laws which are attached hereto as Exhibit C.

The present Trustees of the Trust, and their mailing addresses are:

Robert R. Moulton, Jr.
115 Main Street
North Adams, MA 01247

Michael Nuvallie
Office of Community Development
City Hall
10 Main Street
North Adams, MA 01247

8. The provisions contained in Exhibit D attached hereto are hereby adopted for the protection of first mortgagees and are intended to comply with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association with respect to condominium mortgage loans and shall be so interpreted as to effectuate this intention.

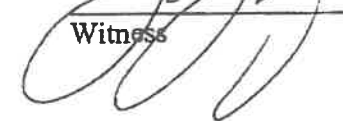
9. This Master Deed may be amended from time to time, and the units may be removed from Chapter 183A by a written instrument signed and acknowledged by the owners of at least 100% interest in the common areas and facilities of the condominium and recorded in the Northern Berkshire Registry of Deeds, at Adams, Massachusetts. No such amendment or removal shall be effective unless assented to in writing by the holders of a first mortgage on each unit. No such amendment shall change the percentage interest of any unit owner in the common areas and facilities without the consent in writing of such unit owner and the holders of any mortgages on such unit.

WITNESS our hands and seals this 13th day of June, 2002.

In the presence of:



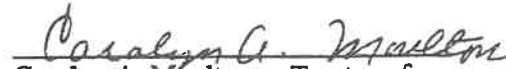
Witness



Witness



Robert R. Moulton, Sr. as Trustee of
The Moulton Family II Nominee Trust



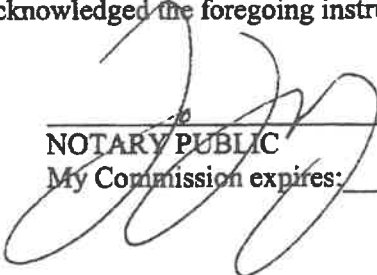
Carolyn A. Moulton as Trustee of
The Moulton Family II Nominee Trust

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

June 13, 2002

Then personally appeared the above-named Robert R. Moulton, Sr. and Carolyn A. Moulton, Trustees as aforesaid, and acknowledged the foregoing instrument to be their free act and deed, before me



NOTARY PUBLIC

My Commission expires:

10/18/07

EXHIBIT A TO MASTER DEEDDescription of the Submitted Land

Being the same premises described in deed of Robert R. Moulton, Sr. to Robert R. Moulton, Sr., and Carolyn A. Moulton, Trustees of The Moulton Family II Nominee Trust, under Declaration of Trust dated May 2, 1996 and recorded with the Northern Berkshire Registry of Deeds in Book 915, Page 209, dated May 2, 2002 and recorded with said Registry of Deeds on May 17, 1996 in Book 915, Page 216, and deed of Carolyn A. Moulton to Robert R. Moulton, Sr. and Carolyn A. Moulton, Trustees of the Moulton Family II Nominee Trust under Declaration of Trust dated May 2, 1996 and recorded with the Northern Berkshire Registry of Deeds in Book 915, Page 209, said deed being dated June 13, 2002 and recorded with the Northern Berkshire Registry of Deeds in Book 1063, Page 391.

EXHIBIT B TO MASTER DEED

Descriptive Schedule of Condominium Units

- A. Designation: Unit A
- B. Location: Mohawk Theater Building
115 Main Street
North Adams, MA 01247
- C. Approximate Area (sq.f.): 3,753
- D. Number of Rooms: Seven (7)
- E. Immediate Common Area
To Which Unit Has Access: Exterior of Mohawk Theater
Building
- F. Percentage of Interest
In Common Elements: Twenty-Five (25%) Percent

- A. Designation: Unit B
- B. Location: Mohawk Theater Building
109-113 Main Street
North Adams, MA 01247
- C. Approximate Area (sq.f.): 11,435
- D. Number of Rooms: Eleven (11)
- E. Immediate Common Area
To Which Unit Has Access: Exterior of Mohawk Theater
Building
- F. Percentage of Interest
In Common Elements: Seventy-Five (75%) Percent

EXHIBIT C TO MASTER DEEDMOHAWK THEATER CONDOMINIUMSDECLARATION OF TRUST

DECLARATION OF TRUST made this 13th day of June, 2002 by Robert R. Moulton, Sr. and Carolyn A. Moulton (hereinafter called the Trustees, which terms and any pronoun referring thereto shall be deemed to include their successors in Trust hereunder and to mean the Trustees for the time being hereunder wherever the context so permits). The initial principal place of business of the Trust shall be the Office of Community Development, City Hall, 10 Main Street, North Adams, Massachusetts 01247. The principal place of business may be changed by an instrument executed by a majority of Trustees and recorded with the Berkshire Northern District Registry of Deeds (the "Registry of Deeds").

ARTICLE IName of Trust

The Trust hereby created shall be known as MOHAWK THEATER CONDOMINIUMS TRUST, and under that name, so far as legal, convenient and practicable, shall all business carried on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed.

ARTICLE IIThe Trust and Its Purpose

Section 2.1 Unit Owners' Organization. All of the rights and powers in and with respect to the common areas and facilities of Mohawk Theater Condominiums (the "Condominium") established by a Master Deed of even date (the "Master Deed") which are by virtue of provisions of chapter 183A of the Massachusetts General Laws conferred upon or exercisable by the organization of Unit Owners of the Condominium and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants with right of survivorship as Trustees of this Trust, in Trust, to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the owners of record from time to time of the Units of the Condominium (hereinafter referred to as the "Beneficial interest") set forth in Article IV hereof and in accordance with the provisions of Section 10 of Chapter 183A for the purposes therein set forth.

Section 2.2 Not a Partnership. It is hereby expressly declared that a Trust and not a partnership has been created and that the Unit Owners are beneficiaries, and not partners or associates nor in any other relation whatever between themselves with respect

to the Trust property, and hold no relation to the Trustees other than that of beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of Chapter 183A of the Massachusetts General Laws.

ARTICLE III

The Trustees

Section 3.1 Number, Designation and Acceptance of Trustees. Except as expressly provided in the second paragraph of this Section 3.1, there shall at all times be Trustees consisting of such number not less than two nor more than four, as shall be determined by vote of not less than 51% of the Beneficial Interest hereunder. The term of each Trustee shall be for one year.

Notwithstanding anything to the contrary in this Trust, until such time as Declarant or its successors and assigns own less than Two (2) Units, there shall be not more than one Trustee, namely the Declarant herein, shall be entitled to designate two of such Trustees.

Section 3.1.1 Vacancies. Subject to the rights of the Declarant under this Section 3.1 to fill vacancies during the time the Declarant is entitled to designate Trustees, if and whenever the number of such Trustees shall become less than two, or less than the number of Trustees last determined an aforesaid, a vacancy or vacancies in said office shall be deemed to exist. Each such vacancy shall be filled by instrument in writing setting forth (a) the appointment of a natural person to act as such Trustee, signed (i) by any Unit Owner who certifies under oath that Unit Owners entitled to not less than 51% of the beneficial interest hereunder have voted to make such appointment, or (ii) if Unit Owners entitled to such percentage have not within 30 days after the occurrence of any such vacancy made such appointment, by a majority of the then remaining Trustees, or by the sole remaining Trustee if only one, and (b) the acceptance of such appointment, signed and acknowledged by the person so appointed. Such appointment shall become effective upon the recording with the Registry of Deeds of a certificate of such appointment signed by a majority of the then remaining Trustees or Trustee if there be any still in office or by said Unit Owner on behalf of Unit Owners holding at least 51% of the Beneficial Interest if there be no Trustees, together with such acceptance, and such person shall then be and become such Trustee and shall be vested with the title to the Trust property jointly with the remaining or surviving Trustees or Trustee without the necessity of any act of transfer or conveyance. During the time the Declarant is entitled to designate any Trustee, any vacancy resulting from expiration of term, resignation, death, incapacity, or removal of a Trustee designated by the Declarant may be filled by an instrument executed on behalf of the Declarant and recorded with the Registry of Deeds stating the new Trustee's name and address and that such Trustee is being so designated and containing the Trustee's acceptance of designation duly acknowledged.

If for any reason any vacancy in the office of Trustee shall continue for more than 60 days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the

application of any Unit Owners and Trustees and notice to all Unit Owners and Trustees and to such other, if any, parties in interest to whom the court may direct that notice be given. The term of any such successor Trustee(s) shall end on the same date as the term of the Trustee(s) which the successor(s) replace. The foregoing provisions of this section to the contrary notwithstanding, despite any vacancy in the office of Trustee, however caused and for whatever duration, the remaining or surviving Trustee(s), subject to the provision of the immediately following section, shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

Section 3.2 Quorums. In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by majority vote at any duly called meeting at which a quorum is present, as provided in Section 5.9.1. The Trustees may act without a meeting but in such event must act unanimously, except in cases requiring response to an emergency, in which event a majority of Trustees may act without a meeting.

Section 3.3 Resignations. Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds and such resignation shall take effect upon the recording of such instrument with the Registry of Deeds. By vote of Unit Owners entitled to not less than 60% of the Beneficial Interest hereunder, but subject to the right of the Declarant recited in Section 3.1 to retain Trustees or its choice, any Trustee (other than the original Trustees and any Trustees designated by the Declarant pursuant to Section 3.1) may be removed with or without cause and the vacancy among the Trustees caused by such removal shall be filled in the manner above provided. Such removal shall become effective upon the recording with the Registry of Deeds of a certificate of removal signed by a majority of the remaining Trustees in office or by three Unit Owners who certify under oath that Unit Owners holding at least 60% of the Beneficial Interest hereunder have voted such removal. By instrument recorded with the Registry of Deeds, the Declarant may remove, with or without cause, any Trustee it is entitled to designate.

Section 3.4 Bond or Surety. Except as provided in Section 7.4, no Trustee, whether an original Trustee or a successor to or as substitute for another, shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder, provided, however, that Unit Owners entitled to not less than 51% of the Beneficial interest of this Trust may at any time by instrument in writing signed by them and delivered to the Trustee or Trustees affected require that any one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such instrument. All expenses and premiums incident to any such bond shall be charged as a common expense of the Condominium.

Section 3.5 Compensation of Trustees. With the approval of a majority of the Trustees, each Trustee may receive such reasonable remuneration for his services and also additional reasonable remuneration for extraordinary or unusual services, legal or otherwise, rendered by him in connection with the Trust hereof, all as shall be from time to time fixed and determined by the Trustees, and such remuneration shall be a common expense of the Condominium. No compensation to Trustees may be voted by the

Trustees with respect to the period before the acquisition of at least 51% of the Beneficial Interest hereunder by persons other than the Declarant.

Section 3.6 No Personal Liability. No Trustee shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his own personal and willful malfeasance and defaults.

Section 3.7 Interest Not Disqualifying. No person shall be disqualified from holding any office by reason of any interest. In the absence of fraud, any Trustee or Unit Owner or any officer of this Trust individually, or any concern in which any such Trustees, officers or Unit Owners have any interest, may be a party to, or may be pecuniarily or otherwise interested in, any contract, transaction or other act of this Trust, and

(a) such contract, transaction or act shall not be in any way invalidated or otherwise affected by that fact;

(b) no such Trustee, officer, Unit Owner or concern shall be liable to account to this Trust for any profit or benefit realized through any such contract, transaction or act; and

(c) any such Trustee may be counted in determining the existence of a quorum at any meeting of the Trustees or of any committee thereof which shall authorize any such contract, transaction or act, and may vote to authorize the same;

provided, however, that such contract, transaction or act shall be duly authorized or ratified by a majority of the Trustees who are not so interested and to whom the nature of such interest has been disclosed, that no such contract, transaction or act involving the Declarant or any concern in which the original Trustees of this Trust have any interest shall require such authorization or ratification.

The term "interest" shall include any personal interest and interest as a director, officer, stockholder, shareholder, Trustee, member or beneficiary of any concern.

The term "concern" shall mean any corporation, association, Trust, partnership, firm or person other than this Trust.

To the extent permitted by law, the authorizing or ratifying vote of the holders of a majority in interest of the Beneficial Interests at an annual meeting or a special meeting duly called for the purpose (whether such vote is passed before or after judgment rendered in a suit with respect to such contract, transaction or act) shall validate any contract, transaction or act of this Trust, or of the Trustees or any committee thereof, with regard to all Unit Owners, whether or not of record at the time of such vote, and with regard to all creditors and other claimants under this Trust; provided, however, that with

respect to the authorization or ratification of contracts, transactions or acts in which any of the Trustees, officers or Unit Owners have an interest, the nature of such contracts, transactions or acts and the interest of any Trustee, officer or Unit Owner therein shall be summarized in the notice of any such annual or special meeting, or in a statement or letter accompanying such notice, and shall be fully disclosed at any such meeting; provided, also, that Unit Owners so interested may vote at any meeting; and provided further, that any failure of the Unit Owners to authorize or ratify such contract, transaction or act shall not be deemed in any way to invalidate the same or to deprive this Trust, its Trustees, officers or employees of its or their right to proceed with such contract, transaction or act. No contract, transaction or act shall be avoided by reason of any provision of this subsection which would be valid but for those provisions.

Section 3.8 Indemnity of Trustees. The Trustees and each of them shall be entitled to indemnity both out of the Trust property and by the Unit Owners against any liability incurred by them or any of them in the execution hereof, including, without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines and, acting by majority, may purchase such insurance against such liability as they shall determine is reasonable and necessary, the cost of such insurance to be a common expense of the Condominium. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the common expenses of the Condominium and for his proportionate share of any claims involving the trust property in excess thereof, all as provided in sections 6 and 13 of said Chapter 183A. Nothing in this Section 3.8 contained shall be deemed, however, to limit in any respect the powers granted to the Trustees in this instrument.

ARTICLE IV

Beneficiaries and the Beneficial Interest in the Trust

Section 4.1 Beneficial Interest. The beneficiaries of this Trust shall be the Unit Owners of the Condominium. Each Unit Owner's Beneficial Interest in this Trust shall be the same as that Unit Owner's undivided interest in the Common Elements of the Condominium appertaining to the Unit as set forth in Exhibit B to the Master Deed, as the same may be amended as set forth therein.

Section 4.2 Each Unit to Vote by One Person. The Beneficial Interest of each Unit shall be held and exercised as a Unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall (a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder, and (b) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one such owner for such purposes.

ARTICLE V

By-Laws

The provisions of this Article V shall constitute the By-Laws of this Trust and the organization of Unit Owners established hereby:

Section 5.1 Powers of the Trustees. The Trustees shall have all the powers and duties necessary for the administration of the offices of the Condominium and may do all things, subject to and in accordance with all applicable provisions of said Chapter 183A and the Master Deed, and, without limiting the generality of the foregoing the Trustees may, with full power and uncontrolled discretion, at any time and from time to time and without the necessity of applying to any court or to the Unit Owners for leave to do so:

- (i) Retain the trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;
- (ii) Sell, assign, convey, transfer, exchange and otherwise deal with or dispose of the trust property, but not the whole thereof, free and discharged of any and all Trusts at public or private sale to any person or persons for cash or on credit, and in such manner and on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the trust property sold or transferred by them, and execute and deliver any deed or other instrument in connection with the foregoing;
- (iii) Purchase or otherwise acquire title to, and rent, lease or hire from others for terms which may extend beyond the termination of this Trust any property or rights to property, real or personal, and own, manage, use and hold such property and such rights;
- (iv) Borrow or in any other manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, even beyond the possible duration of this Trust, and execute and deliver any mortgage, pledge or other instrument to secure any such borrowing;
- (v) Enter into any arrangement for the use or occupation of the trust property, or any part or parts thereof, including, without thereby limiting the generality of the foregoing, leases, subleases, easements, licenses or concessions, upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this Trust;
- (vi) Invest and reinvest the trust property, or any part or parts thereof,

and from time to time, as often as they shall see fit, change investments, including investment in all types of securities and other property of whatsoever nature and however denominated, all to such extent as to them shall seem proper, and without liability for loss even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust funds or which does or may not produce income;

(vii) Incur such liabilities, obligations and expenses and pay from the principal or the income of the trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purpose or this Trust;

(viii) Determine whether receipt by them constitute principal or income or surplus and allocate between principal and income and designate as capital or surplus any of the funds or the Trust;

(ix) Vote in such manner as they shall think fit any or all shares in any corporation or trust which shall be held as trust property, and for that purpose give proxies to any person or persons or to one or more of their number, vote, waive any notice or otherwise act in respect of any such shares;

(x) Deposit any funds of the Trust in any bank or trust company, and delegate to any one or more of their number, or to any other person or persons, the power to deposit, withdraw and draw checks on any funds of the Trust;

(xi) Maintain such offices and other places of business as they shall deem necessary or proper and engage in business in Massachusetts or elsewhere;

(xii) Employ, appoint and remove such agents, managers, officers, board of managers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be a firm of which one or more of the Trustees are members or employees) as they shall deem proper for the purchase, sale or management of the trust property, or any part or parts thereof, or for conducting the business of the Trust, and may define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person. The Trustees may delegate to any such agent, manager, officer, board, broker, engineer, architect, employee, servant, assistant or counsel any or all of their powers (including discretionary powers except that the power to join in amending, altering, adding to, terminating or changing this Declaration of Trust and the Trust hereby created shall not be delegated) all for such times and purposes as they shall deem proper. Without hereby limiting the generality of the foregoing, the Trustees may designate from their number such officers as they deem fit, and may from time to time designate one or more or their own number to be the Managing Trustees or Managing Trustee for the management and administration of the trust property and the business of the Trust, or any part or parts thereof;

(xiii) Generally, in all matters not herein otherwise specified, control and do each and every thing necessary, suitable, convenient or proper for the

accomplishment of any of the purposes or the Trust or incidental to the powers herein or in said Chapter 183A, manage and dispose of the trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution or any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

Section 5.2 Maintenance and Repair of Units and Exclusive Common Areas. The Unit Owners shall pay for all utilities (other than water, which is a common expense) used or consumed in their respective Units and by any heating, hot water and air conditioning equipment serving their Unit, and shall (except as provided in Section 5.3.1 with respect to exterior window frames and doors) be responsible for the proper maintenance and repair of their respective Units and the maintenance, repair and replacement of utility fixtures therein serving the same, including, without limitation, interior finish walls, ceilings, and floors; windows, and interior window trim; interior portions of doors, door frames and interior door trim; plumbing and sanitary waste fixtures and fixtures for water and other utilities; heating, hot water and air conditioning apparatus, electrical fixtures and outlets; and all wires, pipes, drains and conduits for water, sewerage, electric power and light, telephone and any other utility services which are contained in and serve such Unit. Each Unit shall be served by its own heating unit which shall be installed at the expense of the respective Unit Owner. The Unit Owners shall also be responsible for the proper maintenance and repair of any common area and facility the exclusive use of which is assigned to their Unit. If the Trustees shall at any time in their reasonable judgment determine that the interior of a Unit or an exclusively assigned common area is in such need of maintenance or repair that the market value of one or more other Units is being adversely affected or that the condition of the common areas and facilities or of a Unit or fixtures, furnishing, facility or equipment therein is hazardous to any Unit or the occupants thereof, the Trustees shall in writing request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within 15 days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have work performed for the account of such Unit Owner whose Unit or exclusively assigned common area is in need of work and to enter upon and have access to such Unit or exclusively assigned common area for that purpose and the cost of such work as is reasonably necessary therefor shall constitute a lien upon such Unit and the Unit Owner thereof shall be personally liable therefor.

Section 5.3 Maintenance, Repair and Replacement of Common Areas and Facilities; Assessment of Common Expenses Therefor.

Section 5.3.1 Trustees' Responsibilities. Subject to the provisions of Section 5.2, the Trustees shall be responsible for the proper maintenance, repair and replacement of the common areas and facilities of the Condominium (see section 5.5 for specific provisions dealing with repairs and replacement necessitated because of casualty loss) and such may be done through the managing agent, as hereinafter provided, and any two Trustees or any others who may be so designated by the Trustees may approve payment of vouchers for such work, and the expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4. For purposes of this Section 5.3, the Trustees shall maintain, repair and replace the exterior façade, window frames and

exterior portions of doors to Units as if they were part of the common elements, provided, however, the cost of such maintenance, repair and replacements shall be paid for directly by the owner(s) of the Unit of which such window frames and doors are a part as if the same were an exclusively assigned common area.

Section 5.3.2 Connecting Units and Exclusive Use of Common Areas. The Trustees may authorize that Units be connected for the purposes of single occupancy and that for such purposes cuts be made in common walls or floors or that exclusive use of a common area be assigned, provided always that the owner of Units permitted to so combine them shall do any work involved in connecting Units at such owner's expense and in the manner prescribed by the Trustees. Any such authorization shall be valid only if in writing signed by a majority of the Trustees then in office and shall become void unless the work to connect the Units contemplated by such authorization shall be commenced within six months after the date of such authorization and shall be completed within a reasonable time thereafter. The Trustees may assess a special charge in connection with permission for exclusive use of a common area or way require that the owner receiving the right to exclusive use of a common area maintain such common area. At such time as connected Units are no longer in common ownership, the owners of such Units shall promptly restore the common walls and/or floors between the Units at their expense, and, upon their failure to do so, the Trustees may perform or cause to be performed such work, in which event the said Unit Owners shall be personally liable to the Trust for the cost of such work which, if not paid when demanded, shall constitute a lien on the Units of the Unit Owners assessed in proportion to their respective Beneficial Interests.

Section 5.3.3. Notwithstanding anything to the contrary, all repairs, maintenance or other work that is required or desirable to be made to the area comprising the outside area surrounding a particular unit and which does not directly affect another unit shall be made and paid for by the owner of the unit requiring or desiring the repair, maintenance or other work. All such repairs, maintenance or other work done shall be in conformity with existing material, style and color of the condominium exterior.

Section 5.4 Common Expense and Tax Funds.

Section 5.4.1 Reserve Funds. The Unit Owners shall be liable for common expenses and, subject to the Trustees' judgment as to reserve and contingent liability funds stated below, shall be entitled to rebates of excess common expense assessments, if any, of the condominium in proportion to their respective percentages of Beneficial Interest as established in Article IV. The Trustees may at any time or times distribute such excess assessments, if any, among the Unit Owners in such proportions. The Trustees shall, to such extent as they deem advisable, reserve and set aside common funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of the following Sections 5.4.2 and 5.4.4, for repair, rebuilding or restoration of the trust property or for improvements thereto, and the funds so reserved shall not be deemed to be available for distribution. Notwithstanding anything in the foregoing of this Section 5.4.1 or elsewhere in these By-Laws to the contrary, the Trustees shall use best efforts to

manage the trust property in such a manner so as to qualify the Trust as a "Condominium management association" under the applicable provisions of Section 528 of the Internal Revenue Code and applicable regulations thereunder, as the same may from time to time be amended, and no part of the net earnings of the Trust shall inure (other than by a rebate of excess assessments) to the beneficiaries of this Trust.

Section 5.4.2 Estimate of Common Expenses and Assessments and Taxes.

At least 30 days prior to the commencement of each fiscal year of this Trust the Trustees shall estimate the common expenses expected to be incurred during the next fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any excess assessments from the prior year, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Unit Owners for their respectable shares of much assessment, according to their percentages of Beneficial Interest in the common areas and facilities, and such statements shall, unless otherwise provided therein, be due and payable within 30 days after the same are rendered. In the event that the Trustees shall determine during any fiscal year that the assessment so made in lose than the common expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred, the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as aforesaid. The Trustees may in their discretion provide for payments of statements in monthly or other installments. The amount of each such statement shall be a personal liability of the Unit Owner and if not paid when due, shall upon the expiration of such grace period as the Trustee may (but need not) designate, carry a late charge of 18% per annum and shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of said Chapter 183A. Each Unit Owner, by acceptance of a Unit Dead, agrees to pay all costs and expenses, including interest and reasonable attorneys' fees, incurred by the Trustees in collection of said assessments for common expenses and enforcement of said lien. During the period, if any, the Condominium is assessed on one tax bill, as opposed to a separate tax bill for each Unit, each Unit Owner not paying a monthly tax escrow deposit to his bank mortgagee shall deposit with the Trustees on the first of each and every month 1/12 of the estimated real estate tax liability of that Unit determined by that Unit's percentage of beneficial interest. The Trustees shall pay such tax deposits to the Town of Adams at least ten days prior to the dates in each calendar year when taxes are due and payable. Said tax deposits shall be deemed a common expense with respect to that Unit, and the Trustees shall have the same rights and remedies with respect to a default in making tax deposits required hereunder an they would for a default in payment of common expenses and supplemental assessments as aforesaid.

Section 5.4.3 Trustees Authorize Tax Abatement Applications. No Unit owner shall file an application for abatement of real estate taxes without the prior written approval of the Trustees.

Section 5.4.4 Application of Common Funds. The Trustees shall expend common funds only for common expenses and lawful purposes permitted hereby and by the provisions of Chapter 183A.

Section 5.4.5 Notice of Default to Mortgagees. Upon written request addressed to the Trustees by a first mortgagee of any Unit, the Trustees shall notify such mortgagees of any defaults by the mortgagor of such Unit in the performance of the mortgagor's obligations under the Master Deed or this Declaration of Trust.

Section 5.5 Rebuilding Restoration Improvements.

Section 5.5.1 Determination of Scope of Loss. In the event of any casualty loss to the trust property, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds 10% of the value of the condominium immediately prior to the casualty, and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed 10% of such value, the Trustees shall proceed with the necessary repairs, rebuilding or restoration in the manner provided in paragraph (a) of Section 17 of said chapter 183A. If such loss as so determined does exceed 10% of such value, the Trustees shall forthwith submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) by the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration, and (b) a copy of the provisions of said Section 17; and the Trustees shall thereafter proceed in accordance with, and take such further action as they may in their discretion deem advisable in order to implement the provisions of paragraph (b) of said Section 17.

Section 5.5.2 Submission to Unit Owners of Proposed Improvements. If and whenever the Trustees shall propose to make any improvement to the common areas and facilities of the Condominium, or shall be requested in writing by the Unit Owners holding 25% or more of the Beneficial Interest in this Trust to make any such improvement, the Trustees shall submit to all Unit Owners (a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same, and (b) a copy of the provisions of Section 18 of said Chapter 183A. Upon (a) the receipt by the Trustees of such agreement signed by the Unit Holders holding 75% or more of the Beneficial Interest or (b) the expiration of 90 days after such agreement was first submitted to the Unit Owners, whichever of said (a) and (b) shall first occur, the Trustees shall notify all Unit Owners of the aggregate percentage of beneficial interest held by Unit Owners who have then signed such agreement. If such percentage exceeds 75%, the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with said Section 18 of Chapter 183A, shall charge the cost of improvement to all the Unit Owners. If the cost of the improvement exceeds 10% of the value of the Condominium, any Unit Owner not so agreeing to said improvement shall have the rights provided to such Unit Owner under Section 18(b) of Chapter 183A. The agreement so circulated may also provide for separate agreement by the Unit Owners that if Unit Owners holding more than 50% but less than 75% of the beneficial interest so consent, the Trustees shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting in writing.

Section 5.5.3 Arbitration or Disputed Trustee Action. Notwithstanding anything in Section 5.5.1 and 5.5.2 contained, (a) in the event that any Unit Owner or Owners shall

by notice in writing to the Trustees dissent from any determination of the Trustees with respect to the value of the Condominium or any other determination or action of the Trustees under this Section 5.5, and such dispute shall not be resolved within 30 days after such notice then either the Trustees or the dissenting Unit Owner or Owners may submit the matter to arbitration, and for that purpose one arbitrator shall be designated by the Trustees, one by the dissenting Unit Owner or Owners and a third by the two arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association, and (b) the Trustees shall in no event be obliged to proceed with any repair, rebuilding or restoration or any improvements, unless and until they have received funds in an amount equal to the Trustee's estimate of all costs thereof.

Section 5.6 Administrative Rules and Regulations. The Trustees may at any time and from time to time adopt, amend and rescind administrative rules and regulations governing the details of the operation and use of the common areas and facilities, and such restrictions on and requirements respecting the use and maintenance of the Units and the use of the common areas and facilities as are consistent with provisions of the Master Deed and are designed to prevent unreasonable interference with the use by the Unit Owners of their Units and of the common areas and facilities and the Trustees do hereby adopt the Rules and Regulations annexed to this Declaration of Trust which Rules and Regulations are incorporated herein by reference.

Section 5.7 Managing Agent. The Trustees may, at their discretion, appoint a manager or managing agent to administer the management and operation of the Condominium, including the incurring of expenses, the making of disbursements and the keeping of accounts, as the Trustees shall from time to time determine. The Trustees or such manager or managing agent may appoint, employ and remove such additional agents, attorneys, accountants or employees as the Trustees may from time to time determine.

Section 5.8 Insurance.

Section 5.8.1 Insurance Coverage. The Trustees shall obtain and maintain, to the extent available, master policies of insurance of the following kinds, naming the Trust, the Trustees, all of the Unit Owners and their mortgagees as insureds as their interests appear:

A. Casualty or physical damage insurance on the buildings and all other insurable improvements forming part of the Condominium (including all of the Units but not including furniture, furnishings and other personal property of the Unit Owners contained therein), now existing or as they may from time to time be increased by amendment to the Master Deed, together with the service machinery, apparatus, equipment and installations located in the Condominium and existing for the provision of central services or for common use, in an Amount not less than 100% of their full replacement value (exclusive of foundations) as determined by the Trustees in their judgment, against (1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction, and (2) such other hazards and risks as the Trustees from time to time in their discretion shall determine to be

appropriate, including but not limited to vandalism, malicious mischief, windstorm and water damage, boiler and machinery explosion or damage and plate glass damage. All policies of casualty or physical damage insurance shall provide (to the extent such clauses are obtainable) (1) that such policies may not be canceled or substantially modified without at least ten days' prior written notice to all of the insureds, including each Unit mortgagee and (2) that the coverage thereof shall not be terminated for nonpayment of premiums without thirty days' notice to all of the insureds including each Unit mortgagee. Certificates of such insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered by the Trustees to all Unit Owners and their mortgagees upon request at least ten days prior to the expiration of the then current policies. Such policies may include such deductible provisions as the Trustee shall determine. The cost of repairs due to fire or other insured casualty to a Unit or to the common facilities that is not covered by insurance by virtue of the deductible provisions shall be a common expense.

B. Comprehensive public liability and property damage insurance in such amounts and forms as shall be determined by the Trustees, covering the Trust, the Trustees, all of the Unit Owners and any manager or managing agent of the Condominium, with limits of not less than \$1,000,000 combined single limit.

C. Workmen's compensation and employer's liability insurance covering any employees of the Trust.

The Trustees may, in their sole discretion, purchase such other insurance as they shall determine.

Section 5.8.2 Payment to Trustees in Case of Loss. Such master policies shall provide that all casualty loss proceeds thereunder shall be paid to the Trustees as insurance Trustees under these By-Laws. The duty of the Trustees as such insurance Trustees shall be to receive such proceeds as are paid and to hold, use and disburse the same for the purpose stated in this section and Section 5.5.1. If repair or restoration of the damaged portions of the Condominium is to be made, all insurance loss proceeds shall be held in shares for the Trust and the Owners of the damaged Units in proportion to the respective costs of repair or restoration of the damaged portions of the common areas and facilities and of each damaged Unit, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged common areas and facilities and damaged Units, and with any excess of any such share of proceeds above such costs of repair or restoration to be paid to the Trust or Unit owner for whom held upon completion of repair or restoration; but if pursuant to Section 5.5.1, restoration or repair is not to be made, all insurance loss proceeds shall be held as common funds of the Trust and applied for the benefit of Unit Owners in proportion to their percentage interests as established in Article IV if the Condominium is totally destroyed, and, in the event of a partial destruction, to those Unit Owners who have suffered damage in proportion to the damage suffered by them. Such application for the benefit of Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgage with respect to such Unit so requires.

Section 5.8.3 Other Provisions. In addition to the coverage and provisions set forth in Section 5.8.1, the Trustees shall, in their discretion, see that all policies of physical damage insurance obtained shall: (1) contain waivers of subrogation by the insurer as to claims against the Condominium, the Trustees, their employees, Unit Owners and members of the family of any Unit Owner who reside with said Unit Owner, except in cases of arson and fraud; (2) contain a waiver of defense of invalidity on account of the conduct of any of the Unit Owners over which the Trustees have "no control"; (3) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Unit Owners or their mortgagee; and (4) shall exclude policies obtained by individual Unit Owners from consideration under any "no other insurance" clause.

Section 5.8.4 Owner's Insurance and Responsibility for Increase in Premiums of Master Policy. Each Unit Owner may obtain additional insurance for his or her own benefit and at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.8.1, and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property owned or supplied by individual Unit Owners) shall be filed with the Trustees. If any improvements to a Unit causes any increase in the premium of the insurance carried by the Trustees pursuant to Section 5.8.1, such increase shall be paid as a common expense by the Owner of the Unit making said improvement.

Section 5.8.5 Notice of Owner's Improvements. Each Unit Owner, within 20 days after the commencement of construction of such improvements, shall notify the Trustees in writing of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of \$1,000 and upon receipt of such notice, the Trustees shall notify the insurer under any policy obtained pursuant to Section 5.8.1 of any such improvements.

Section 5.8.6 Insurance a Common Expense. The cost of such insurance shall be deemed a common expense assessable and payable as provided in section 5.4.

Section 5.9 Meetings.

Section 5.9.1 Meetings of Trustees. The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect the Chairman, Treasurer and Secretary and any other officers they deem appropriate. Other meetings may be called by any Trustee and in such other manner as the Trustees may establish, provided however, that written notice of each meeting stating the place, day and hour thereof shall be given at least two days before such meeting to each Trustee. Any Trustee then in office shall constitute a quorum at all meetings. Such meetings shall be conducted in accordance with such rules as the Trustees may adopt.

Section 5.9.2 Meeting of Unit Owners. There shall be an annual meeting of the Unit Owners on the last Thursday of January in each year at 8:00 P.M. at such reasonable place as may be designated by the Trustees by written notice given to the Unit Owners at least seven days prior to the date so designated by the Trustees. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may be called at any time by the Trustees and shall be called by them upon the written request of Unit Owners entitled to more than 20% of the Beneficial Interest hereunder. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least seven days prior to the date so designated.

Section 5.9.3 Notice of Certain Matters; Quorum; Majority Vote. Whenever at any meeting the Trustees propose to submit to the Unit Owners any matter with respect to which specific approval of, or action by, the Unit Owners is necessary or required by law, the notice of such meeting shall so state and reasonably specify such matter. Unit Owners entitled to not less- than 51% of the beneficial interest of this Trust shall constitute a quorum at all meetings. Any action voted at a meeting shall require the vote of 51% of the Beneficial Interest in the Trust except where the other provisions of this Trust or said Chapter 183A requires a larger percentage.

Section 5.10 Notices to Unit Owners. Every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the Trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if given in writing by one or more of the Trustees to such Unit Owner by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears upon the records of the Trustees if other than at his Unit in the Condominium or to such unit if such Unit appears as the Unit Owner's address or if no address appears, by delivering it to such Unit, at least seven days prior to the date fixed for the happening of the matter, thing or event of which such notice is given. The owner or Owners of each Unit shall have the responsibility of providing the Trustees with any address other than the Unit to which they desire notices to be mailed.

Section 5.11 Inspection of Books; Reports to Unit Owners. Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees, to the Unit Owners and to first mortgagees of any Unit at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the Unit Owners a report of the operations of the Trustees for such year which shall include financial statements by a certified public accountant which may, but need not be certified, as the Trustees shall determine, and shall be in such summary form and in only such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by registered mail within a period of 30 days of the date of the receipt by him shall be deemed to have assented thereto.

Section 5.12 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the name of the Trustees or of the Trust may be signed by any two Trustees (or by one Trustee if there is

only one), or by any person or persons to whom such power may at any time or from time to time have been delegated by not less than a majority of the Trustees.

Section 5.13 Fiscal Year. The fiscal year of the Trust shall be the year ending with the last day of December or such other date as may from time to time be determined by the Trustees.

ARTICLE VI

Rights and Obligations of Third Parties Dealing with the Trustees

Section 6.1 No purchaser, mortgages, lender or other person dealing with the Trustees as they then appear on record in the Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder, or be affected by any notice, implied or actual, other than by a certificate thereof, and such record or certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of the Trustees, or any one or more of them, for monies or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees, and any instrument of appointment of a new Trustee or resignation of an old Trustee purporting to be executed by the Trustees, Unit Owners or other persons herein required to execute the same, shall be conclusive in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof.

Section 6.2 No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligations covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees shall look only to the trust property for payment under such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of Section 3.8 or under provisions of Chapter 183A.

Section 6.3 Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by

the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this instrument.

Section 6.4 This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper signed by said Trustees or any of them which it may be deemed desirable to be recorded shall be recorded with the Registry of Deeds and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the trust property or any beneficiary thereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with the Registry of Deeds. Any certificate signed by two Trustees in office at the time (only one Trustee if there is only one at the time), setting forth as facts any matters affecting the Trust, including statements as to whether common expenses are paid with respect to a particular Unit, as to who are the beneficiaries, as to what action has been taken by the beneficiaries and as to matters determining the authority of the Trustees, or any one of them to do any act, when duly acknowledged and recorded with the Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder, setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any Instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon be conclusive evidence of the truth of the statements made in such certificate, the existence of the facts therein set forth and the existence of the authority of such one or more Trustees to execute and deliver the designated instrument on behalf of the Trust.

ARTICLE VII

Amendments and Termination

Section 7.1 Amendments. The Trustees, with the consent in writing of Unit Owners entitled to not less than 75% of the Beneficial Interest in this Trust, may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration addition or change (a) according to the purport of which the percentage of the Beneficial Interest hereunder or any Unit Owner would be altered or in any manner or to any extent whatsoever modified or affected, so as to be different from the percentage of the individual interest of such Unit Owner in the common areas and facilities as set forth in the Master Deed, and any amendment thereto, (b) which would render this Trust contrary to or inconsistent with any requirements or provisions of said Chapter 183A, or (c) affects the right of the Declarant to appoint Trustees of its choice pursuant to Section 3.1 (unless such amendment is assented to in writing by the Declarant) shall be valid or effective. Any amendment, alteration, addition or change pursuant to the forgoing provisions of this paragraph shall become effective upon the recording with the Registry of Deeds of an instrument of amendment, alteration,

addition, or change as the case may be, signed, sealed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds, by any two Trustees, if there be at least two then in office (or one Trustee if there be only one), setting forth in full the amendment, alteration, addition or change and reciting the consent of the Unit Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition or change whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes. Nothing in this Section 7.1 shall be construed as making it obligatory upon the Trustees to amend, alter, add to or change the Declaration of Trust upon obtaining the necessary consent as hereinbefore provided. Notwithstanding anything to the contrary in this Declaration of Trust, during the period when the Declarant shall be entitled to designate Trustees pursuant to Section 3.1, the Trustee shall have the right, without the consent of any Unit Owner, to amend this Declaration of Trust at any time or times in order to conform the terms and provisions hereof to the then appertaining requirements of the Federal Home Loan Mortgage Corporation ("FHLMC") and/or the Federal National Mortgage Association ("FNMA") provided, however, that in so doing, the Trustees shall not impair any Unit Owner's title to a Unit or such Unit's undivided interest in the common areas and facilities, nor any first mortgage of record held by any institutional lender on any Unit. Any such amendment by the Trustees to conform this Declaration of Trust to FHLMC or FNMA requirements shall become effective upon the recording with the Registry of Deeds of an instrument of amendment, alteration, addition or change as the case may be, signed, sealed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds, by any two Trustees, (or one Trustee if there be only one), setting forth in full the amendment, alteration, addition or change. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition or change whether stated in the instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

Section 7.2 Termination. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in Section 19 of said Chapter.

Section 7.3 Disposition of Trust Property Upon Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of Chapter 183A, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder, to the Unit Owners according to their respective percentages of Beneficial Interest hereunder. In making any sale under this section, the Trustees shall have power to sell by public auction or private contract and to pay off or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their

performance thereof be shown to be in their judgment necessary or desirable in connection therewith.

The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of trust property may have passed.

ARTICLE VIII

Construction and Interpretation

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include individuals, firms, associations, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. The title headings of different parts hereof are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates, words defined in Chapter 183A shall have the same meaning here.

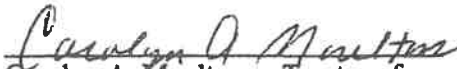
WITNESS our hands and seals this 13 day of June, 2002.

In the presence of:

Witness

Witness


Robert R. Moulton, Sr. as Trustee of
the Moulton Family II Nominee Trust

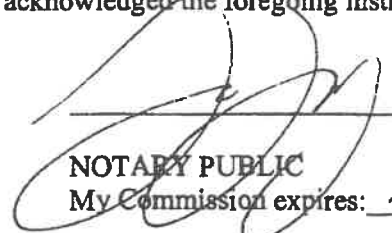

Carolyn A. Moulton as Trustee of
the Moulton Family II Nominee Trust

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

June 13, 2002

Then personally appeared the above-named Robert R. Moulton, Sr. and Carolyn A. Moulton, Trustees as aforesaid, and acknowledged the foregoing instrument to be their free act and deed, before me


NOTARY PUBLIC

My Commission expires: 10/18/07

MOHAWK THEATRE CONDOMINIUMS
RULES AND REGULATIONS

In these rules and regulations the word "Condominium" shall refer to Mohawk Theatre Condominiums and the words "common areas and facilities", "Condominium Trustees", "Unit", and "Unit Owners" shall have the meaning given to these terms in the Master Deed creating Mohawk Theatre Condominiums.

1. No obstruction of common areas. Unit Owners shall not cause, nor shall they suffer, obstruction of common areas and facilities except as the Condominium Trustees may in specific instances expressly permit in writing.

2. Effect on insurance. No Unit Owner shall use his Unit in such fashion as to result in the cancellation of insurance maintained by the Condominium Trustees on the Condominium or in an increase in the cost of such insurance, except that uses resulting in increase in premiums may be made by specific arrangement with the Condominium Trustees providing for the payment of such increased insurance costs by the Unit Owner concerned.

3. Signs. Unit Owners may place their names only in places provided for by the Condominium Trustees. Unit owners may not display "For Sale", "For Rent", signs in windows of their Unit nor may the Owners of residential Units place window displays or advertising in windows of such Units.

4. Pets. The Condominium Trustees may insist upon any Unit owner not keeping a pet which the Condominium Trustees, in their sole judgment, determine interferes with the rights of other Unit Owners. This regulation shall not be applicable to "seeing eye" dog, for any Unit owner that is legally blind.

5. Radios, phonographs, etc. The tone volume of television sets, radios, phonographs and musical instruments shall be turned down after 11 p.m. and shall, at all times, be kept at a sound level which will not annoy the occupants of neighboring Units.

6. Laundry. The Unit Owner shall not hang laundry, rugs, drapes or the like out of a Unit.

7. Abuse of mechanical system. The Condominium Trustees may charge to a Unit Owner any damage caused by such Unit owner to the mechanical or electrical system of the Condominium by misuse of those systems by a Unit Owner.

8. No offensive activity. No noxious or offensive activity shall be carried on in any Unit, or in the common areas and facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit owners or occupants. No Unit owner shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors or licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of other Unit owners.

THE MOULTON FAMILY II NOMINEE TRUST

TRUSTEE'S CERTIFICATE

The undersigned,, Trustees of **THE MOULTON FAMILY II NOMINEE TRUST**, under a Declaration of Trust dated May 2, 1996, and recorded with the Berkshire County (Northern District) Registry of Deeds in Book 915, Page 209, (the "Trust") hereby certify as follows:

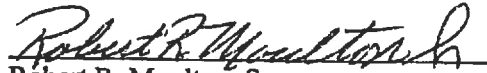
1. That we are the Trustees of the Trust;
2. That the Trust has not been altered, amended, revoked, or terminated;
3. That pursuant to the Trust, when specifically authorized and directed by the beneficiary of the Trust, the Trustees will have full right, power and authority to deal with any property owned or held by the Trust with the same force and effect as though such property were individually owned; and
4. That the Trustees have been duly authorized and directed by the beneficiary of the Trust and the Trustees are hereby authorized, to execute, acknowledge and deliver all such instruments and undertake all such action as the Trustees may deem necessary or convenient to consummate the establishment of a Condominium to be known as **MOHAWK THEATER CONDOMINIUMS TRUST**, to be governed by and subject to the provisions of Chapter 183A of the General Laws of Massachusetts, the creation of which is in the best interest of the Trust and the Trust will receive a substantial and direct financial benefit from the creation of said Condominium.

MARTIN & OLIVEIRA
A PROFESSIONAL L.L.P.
Attorneys and Counselors at Law

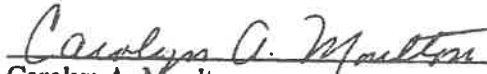
100 NORTH STREET
PITTSFIELD, MA 01201-5190
Tel (413) 443-6455
Fax (413) 445-5883
MAIL@martinoliveira.com

EXECUTED under the pains and penalties of perjury and as an instrument under seal this 13th day of June, 2002.

**THE MOULTON FAMILY II
NOMINEE TRUST**



Robert R. Moulton, Sr.,
Trustee as Aforesaid and Not Individually



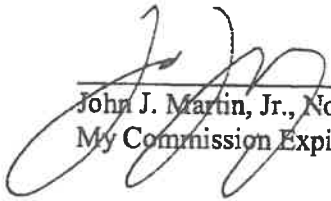
Carolyn A. Moulton
Trustee as Aforesaid and Not Individually

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

June 13th, 2002

Then personally appeared the above-named Robert R. Moulton, Sr. and Carolyn A. Moulton, Trustees, and acknowledged the foregoing instrument to be their free act and deed, and the free act and deed of the Nominee Trust, before me,


John J. Martin, Jr., Notary Public
My Commission Expires: 10/18/07

MARTIN & OLIVEIRA
A PROFESSIONAL L.L.P.
Attorneys and Counselors at Law

100 NORTH STREET
PITTSFIELD, MA 01201-5190
Tel (413) 443-6455
Fax (413) 445-5883
MAIL@martinoliveira.com

\\Moserver\jrm\pulton, Robert\Sale\0612 TrusteesCort.wpd

ATTACHMENT D

BOOK 140, PAGE 832 and PAGE 833



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CERTIFICATE OF APPOINTMENT OF SUCCESSOR TRUSTEE AND
ACCEPTANCE

MOHAWK THEATER CONDOMINIUMS TRUST
109-115 MAIN STREET, NORTH ADAMS, MASSACHUSETTS 01247

This is to certify that the undersigned, being all of the unit owners of the Mohawk Theater Condominiums Trust, pursuant to a Declaration of Trust dated June 13, 2002 and recorded with the Northern Berkshire Registry of Deeds in Book 1063 Page 394, hereby appoint Richard J. Alcombright to be a Trustee of said Trust, to fill the vacancy caused by the resignation of Michael Nuwallie.

Executed at North Adams, Massachusetts this 18 day
of October, 2011.

In the presence of:

Lisa A. Loomis
Witness

By: Robert R. Moulton, Jr.
Robert R. Moulton, Jr.

Lisa A. Loomis
Witness

CITY OF NORTH ADAMS

By: Richard J. Alcombright
Richard J. Alcombright
Mayor

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this 18 day of October, 2011, before me, the undersigned notary public, personally appeared ROBERT R. MOULTON, JR., proved to me through satisfactory evidence of identification which was Personally Known, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.

Lisa A Loomis
Notary Public
My Commission Expires: 1-27-17

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this 18 day of October, 2011, before me, the undersigned notary public, personally appeared RICHARD J. ALCOMBRIGHT as Mayor of the City of North Adams proved to me through satisfactory evidence of identification which was Personally Known, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it as Mayor aforesaid voluntarily for its stated purpose.



Lisa A Loomis
Notary Public
My Commission Expires: 1-27-17

I, RICHARD J. ALCOMBRIGHT, hereby accepts appointment as Trustee of the above-captioned Trust.

Executed at North Adams, Massachusetts this 18 day of October, 2011.

In the presence of:

Lisa A. Loomis

Witness

Richard J. Alcombright

Richard J. Alcombright

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this 18 day of October, 2011, before me, the undersigned notary public, personally appeared RICHARD J. ALCOMBRIGHT proved to me through satisfactory evidence of identification which was Personally known, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.

Lisa A. Loomis

Notary Public

My Commission Expires: 1-27-17





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RESIGNATION OF TRUSTEE

MOHAWK THEATER CONDOMINIUMSTRUST
109-115 MAIN STREET, NORTH ADAMS, MASSACHUSETTS 01247

The undersigned being a present Trustee of the Mohawk Theater Condominiums Trust under Declaration of Trust dated June 13, 2002 and recorded with the Northern Berkshire Registry of Deeds in Book 1063, Page 394, (the "Condominium Trust") hereby resigns as Trustee.

Executed at North Adams, Massachusetts this 18 day of October, 2011.

In the presence of:

Lisa A. Loomis
Witness

Michael Nuvalle
Michael Nuvalle, Trustee

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this 18 day of October, 2011, before me, the undersigned notary public, personally appeared MICHAEL NUVALLE, as Trustee of the Mohawk Theater Condominiums Trust, proved to me through satisfactory evidence of identification which was Personally Known, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it as Trustee aforesaid voluntarily for its stated purpose.



Lisa A. Loomis
Notary Public
My Commission Expires: 1-27-17

ATTACHMENT E

BOOK 1063, PAGE 421

QUITCLAIM DEED

We, ROBERT R. MOULTON, SR., and CAROLYN A. MOULTON, as Trustees of THE MOULTON FAMILY II NOMINEE TRUST, pursuant to a Declaration of Trust dated May 2, 1996 and recorded with the Northern Berkshire Registry of Deeds in Book 915, Page 209, in consideration of TWO HUNDRED FIVE THOUSAND (\$205,000.00) paid, grant to the CITY OF NORTH ADAMS, a municipal corporation, with offices at 10 Main Street, North Adams, Berkshire County, Massachusetts 01247, with QUITCLAIM COVENANTS, the following condominium unit in North Adams, Massachusetts, created by Master Deed dated June 13, 2002 and recorded with the Northern Berkshire Registry of Deeds, at Adams, Massachusetts, in Book 1063, Page 394, (hereinafter referred to as the "Master Deed") and described therein as follows:

Being Unit B, the post office address of which is: 109-113 Main Street, North Adams, Massachusetts 01247, together with an undivided twenty-five (25) percent interest appertaining to said Unit in the common areas and facilities of said Condominium.

Said premises are hereby also conveyed subject to and with the benefits of the aforementioned Master Deed, Mohawk Theater Condominiums Trust, By-laws, rules regulations adopted under the provisions of Mohawk Theater Condominiums Trust, the floor plans and site plans recorded as part of the Master Deed and any amendment to the foregoing, which instruments together with any amendments thereto, constitute covenants running with the land and shall bind any person having any interest or estate in the unit conveyed herein, his family, servants, agents, employees

Property Location: 109-113 Main Street, North Adams, MA 01247
Unit B of The Mohawk Theater Condominiums

and visitors as though the provisions of and amendments to such instruments were recited and stipulated at length herein.

Each of the units in the Condominium is intended for commercial and residential purposes and such other uses as set forth in the Master Deed.

Meaning and intending to convey, and hereby expressly conveying, a portion of the premises conveyed to the Grantor herein by deed of Robert R. Moulton, Sr., dated May 2, 1996 and recorded May 17, 1996 with the Northern Berkshire Registry of Deeds in Book 915, Page 216.

WITNESS our hands and seals this 13th day of June, 2002.

In the presence of:

THE MOULTON FAMILY II
NOMINEE TRUST

Witness

By Robert R. Moulton Sr.
Robert R. Moulton, Sr.
Trustee

Witness

By Carolyn A. Moulton
Carolyn A. Moulton
Trustee

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

June 13, 2002

Then personally appeared the above-named ROBERT R. MOULTON, SR., and CAROLYN A. MOULTON, Trustees of THE MOULTON FAMILY II NOMINEE TRUST, and acknowledged the foregoing instrument to be their free act as Trustees of THE MOULTON FAMILY II NOMINEE TRUST, before me,

Notary Public
My Commission Expires: 10/8/07

ADAMS
DEEDS REELS
BERKSHIRE

06/17/02 2:54PM
000000 #4450

FEE \$934.80
CASH \$934.80

THE MOULTON FAMILY II NOMINEE TRUST**TRUSTEE'S CERTIFICATE**

The undersigned,, Trustees of **THE MOULTON FAMILY II NOMINEE TRUST**, under a Declaration of Trust dated May 2, 1996, and recorded with the Berkshire County (Northern District) Registry of Deeds in Book 915, Page 209, (the "Trust") hereby certify as follows:

1. That we are the Trustees of the Trust;
2. That the Trust has not been altered, amended, revoked, or terminated;
3. That pursuant to the Trust, when specifically authorized and directed by the beneficiary of the Trust, the Trustees will have full right, power and authority to deal with any property owned or held by the Trust with the same force and effect as though such property were individually owned; and
4. That the Trustees have been duly authorized and directed by the beneficiary of the Trust and the Trustees are hereby authorized, to execute, acknowledge and deliver all such instruments and undertake all such action as the Trustees may deem necessary or convenient to consummate the sale of 115 Main Street, North Adams, Massachusetts, being Unit B of the MOHAWK THEATER CONDOMINIUMS TRUST to CITY OF NORTH ADAMS for consideration paid in the amount of TWO HUNDRED FIVE THOUSAND (\$205,000.00) DOLLARS. This sale is in the best interest of the Trust and the Trust will receive a substantial and direct financial benefit from the sale.

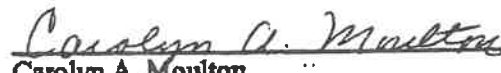
MARTIN E. OLIVEIRA
A PROFESSIONAL L.L.P.
Attorneys and Counselors at Law

100 NORTH STREET
NORTH ADAMS, MA 01201-5100
TE (413) 443-6453
Fax (413) 443-8888
MAIL@martineoliveira.com

EXECUTED under the pains and penalties of perjury and as an instrument under seal this 13th day of June, 2002.

**THE MOULTON FAMILY II
NOMINEE TRUST**


Robert R. Moulton, Sr.,
Trustee as Aforesaid and Not Individually


Carolyn A. Moulton
Trustee as Aforesaid and Not Individually

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

June 13th, 2002

Then personally appeared the above-named Robert R. Moulton, Sr. and Carolyn A. Moulton, Trustees, and acknowledged the foregoing instrument to be their free act and deed, and the free act and deed of the Nominee Trust, before me,


John A. Martin, Jr., Notary Public
My Commission Expires: 10/18/07

MARTIN & OLIVEIRA
A PROFESSIONAL L.L.P.
Attorneys and Counselors at Law

100 NORTH STREET
PITTSFIELD, MA 01201-5190
Tel: (413) 463-0633
Fax: (413) 463-5883
MAIL@martinoliveira.com

\\Moserver\jrmoulton, Robert\Sale\0613 Trustees Cert.wpd

ATTACHMENT F

BOOK 1063, PAGE 426

QUITCLAIM DEED

We, ROBERT R. MOULTON, SR., and CAROLYN A. MOULTON, as Trustees of THE MOULTON FAMILY II NOMINEE TRUST, pursuant to a Declaration of Trust dated May 2, 1996 and recorded with the Northern Berkshire Registry of Deeds in Book 915, Page 209, in consideration of SEVENTY THOUSAND (\$70,000.00) DOLLARS paid, grant to ROBERT R. MOULTON, JR., individually, whose residence and post office address is 1362 Massachusetts Avenue, North Adams, Massachusetts 01247, with QUITCLAIM COVENANTS, the following condominium unit in North Adams, Massachusetts, created by Master Deed dated June 13, 2002 and recorded with the Northern Berkshire Registry of Deeds, at Adams, Massachusetts, in Book 1063, Page 394, (hereinafter referred to as the "Master Deed") and described therein as follows:

Being Unit A, the post office address of which is: 115 Main Street, North Adams, Massachusetts 01247, together with an undivided twenty-five (25) percent interest appertaining to said Unit in the common areas and facilities of said Condominium.

Said premises are hereby also conveyed subject to and with the benefits of the aforementioned Master Deed, Mohawk Theater Condominiums Trust, By-laws, rules regulations adopted under the provisions of Mohawk Theater Condominiums Trust, the floor plans and site plans recorded as part of the Master Deed and any amendment to the foregoing, which instruments together with any amendments thereto, constitute covenants running with the land and shall bind any person having any interest or estate in the unit conveyed herein, his family, servants, agents, employees

Property Location: 115 Main Street, North Adams, MA 01247
Unit A of The Mohawk Theater Condominiums

and visitors as though the provisions of and amendments to such instruments were recited and stipulated at length herein.

Each of the units in the Condominium is intended for commercial and residential purposes and such other uses as set forth in the Master Deed.

Meaning and intending to convey, and hereby expressly conveying, a portion of the premises conveyed to the Grantor herein by deed of Robert R. Moulton, Sr., dated May 2, 1996 and recorded May 17, 1996 with the Northern Berkshire Registry of Deeds in Book 915, Page 216.

WITNESS our hands and seals this 13 day of June, 2002.

In the presence of:

THE MOULTON FAMILY II
NOMINEE TRUST

Witness

By Robert R. Moulton, Sr.
Robert R. Moulton, Sr.
Trustee

Witness

By Carolyn A. Moulton
Carolyn A. Moulton
Trustee

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

June 13, 2002

Then personally appeared the above-named ROBERT R. MOULTON, SR., and CAROLYN A. MOULTON, Trustees of THE MOULTON FAMILY II NOMINEE TRUST, and acknowledged the foregoing instrument to be their free act as Trustees of THE MOULTON FAMILY II NOMINEE TRUST, before me,

ADAMS
DEEDS REG/3
BERKS NORTH

06/17/02 2:59PM 01
000000 #4451

FEE \$319.20

CASH \$319.20

Notary Public

My Commission Expires: 10/18/07

THE MOULTON FAMILY II NOMINEE TRUST**TRUSTEE'S CERTIFICATE**

The undersigned,, Trustees of **THE MOULTON FAMILY II NOMINEE TRUST**, under a Declaration of Trust dated May 2, 1996, and recorded with the Berkshire County (Northern District) Registry of Deeds in Book 915, Page 209, (the "Trust") hereby certify as follows:

1. That we are the Trustees of the Trust;
2. That the Trust has not been altered, amended, revoked, or terminated;
3. That pursuant to the Trust, when specifically authorized and directed by the beneficiary of the Trust, the Trustees will have full right, power and authority to deal with any property owned or held by the Trust with the same force and effect as though such property were individually owned; and
4. That the Trustees have been duly authorized and directed by the beneficiary of the Trust and the Trustees are hereby authorized, to execute, acknowledge and deliver all such instruments and undertake all such action as the Trustees may deem necessary or convenient to consummate the sale of 115 Main Street, North Adams, Massachusetts, being Unit A of the MOHAWK THEATER CONDOMINIUMS TRUST to Robert R. Moulton, Jr. for consideration paid in the amount of SEVENTY THOUSAND (\$70,000.00). This sale is in the best interest of the Trust and the Trust will receive a substantial and direct financial benefit from the sale.

MARTIN & OLIVEIRA
A PROFESSIONAL L.L.P.
Attorneys and Counselors at Law
100 NORTH STREET
PITTSFIELD, MA 01201-8190
Tel (413) 443-6438
Fax (413) 443-3888
MAIL@martinoliveira.com

BK 1063 PG 430

EXECUTED under the pains and penalties of perjury and as an instrument under
seal this 13th day of June, 2002.

**THE MOULTON FAMILY II
NOMINEE TRUST**

Robert R. Moulton, Sr.
Robert R. Moulton, Sr.,
Trustee as Aforesaid and Not Individually

Carolyn A. Moulton
Carolyn A. Moulton
Trustee as Aforesaid and Not Individually

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS

June 13th, 2002

Then personally appeared the above-named Robert R. Moulton, Sr. and Carolyn A. Moulton, Trustees, and acknowledged the foregoing instrument to be their free act and deed, and the free act and deed of the Nominee Trust, before me,

John J. Martin, Jr.
John J. Martin, Jr., Notary Public
My Commission Expires: 10/18/07

MARTIN & OLIVEIRA
A PROFESSIONAL L.L.P.
Attorneys and Counselors at Law
100 NORTH STREET
PITTSFIELD, MA 01201-3100
Tel: (413) 493-6433
Fax: (413) 493-5883
MAIL@martinoliveira.com

\\noserver\jrm\p\lino, Robert\Seid5613 TrusteesCert.wpd

2

END OF DOCUMENT
Northern Berkshire Registry of Deeds

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EXHIBIT II

The narrative included in this section is offered to give the reader the opportunity to see what development has been successfully accomplished while under the ownership of the City of North Adams. It describes the various phases of construction work that had successfully occurred. The narrative developed into a “rolling report” that was used and regularly updated for the various sources of funding that were utilized over this time when trying to redevelop it as a multipurpose venue.

The goal of this project is to transform the defunct Mohawk Theater into a new multi-purpose performing arts facility, featuring not only movies, but with a variety of other venues. The theater opened its doors to the public on November 5, 1938, part of the E.M. Loew chain. Featuring an art-deco interior with Native American motifs, it is located in the heart of the downtown on Main Street. The original single balcony theater boasted a seating capacity of 1,200 along with a twenty-five foot proscenium. This was originally built as a movie house, and is the last large-screen theaters in North Berkshire County, and one of the last few art-deco style theaters in the country. After a long and brilliant history, the theater closed operations in 1991, and has sat dormant since that time.



In the mid-1900s, local government forged a new partnership with the former Downtown Development Incorporated (DDI), a local non-profit whose focus was to help identify ways to help revive the downtown. Two previous studies done in conjunction with DDI, Wallace Floyd Associates and HyettPalma, stated that the renovation of the theater was critical for the overall economic rejuvenation of the downtown. In 1998, additional grant funding was secured through the U.S. Department of Agriculture to conduct a feasibility study on the theater's restoration. This study was completed by the Chicago-based firm, Daniel P. Coffey & Associates, Ltd. The report indicated what everyone else had hoped, that the building was structurally sound, and that it was feasible to rehabilitate it within the confines of the existing building footprint. However, the report revealed major deficiencies, with all of its mechanical systems (plumbing, heating, electrical, etc.) having to be fully replaced. The study put forth various rudimentary schemes for seating layouts, improved public spaces, and general cost estimates ranging from three to five million dollars.

Using this as a springboard, DDI and the City of North Adams secured additional grant funding from the State Department of Housing & Community Development (DHCD). Through their *Downtown Revitalization Program*, \$72,835 was used to restore the theater's marquee, which overhangs on Main Street. A complete restoration of the marquee was undertaken. Major painting and rewiring, which included over seven hundred new bulb replacements and a multitude of new neon strip-lighting, were done throughout. A 'light-up' ceremony took place in May 1999 that was well attended by city officials, business leaders and the general public. The new marquee makes for a very beautiful and colorful spectacle, especially at night, which is presently used for general advertising purposes for municipal events until the theater is fully restored and reopened.

Further progress was made and another \$50,000 from the Mass Development Finance Agency was earmarked for the preliminary architectural and engineering plans for the theater, picking up where the earlier Coffey study left off. A Northampton based firm completed the preliminary architectural design and engineering work. Various options were presented to City and DDI officials, with an estimated construction cost of \$3.73 million.

As these funding efforts unfolded, another challenging aspect of the project existed that centered on site control. Albeit that the theater is thought of as being within one building, actual ownership over the years had always existed within two buildings. The main part of

the theater, with its seating, is located in the rear parcel. The marquee and entry lobby is located in the front building on Main Street. When the theater was proposed to be built in 1938, there was a lot of opposition to the theater being built at this location, which proposed an initial entrance to Eagle Street. In fact, the original construction documents were entitled, "Public Hall for North Adams Theater Company." The city had previously regained ownership to the rear portion in 1996. By July of 2002, the city had gained full ownership of the entire theater and all of its real estate.

With the acquisition and feasibility phases being completed, the project then proceeded to the full design and engineering phase. Funding from a variety of state sources, such as the Massachusetts Office of Travel & Tourism, were secured in conjunction with an earlier \$200,000 FY'05 EDI grant. To help bolster this initial major construction campaign, additional federal EDI funds were secured in the amounts of \$196,000 and \$190,000 for the federal fiscal EDI years of FY'08 and '09 respectively. Rather than keep getting stuck on one overall final plan of restoration, it was decided that a first phase of work could forge ahead. The preliminary work clearly showed that the building was in dire need of exterior repairs, new roof, building stabilization, interior gutting and cleanout, etc. Thus, a first phase of work was decided as the best way to proceed at that juncture. It was envisioned that this track would at least allow some forward progress on actual construction work, yet would also show the general public that in fact the project was *real*, and not something just being talked about in the newspapers once again.

Therefore, a "Phase I Mohawk Theater Restoration-Stabilization Package," was sought for bidding in April of 2008. General bids were due on May 16, 2008, with an award being made to Eastern General Contractors, Inc. of Springfield, MA, in the amount of \$1,743,665.00. Contracts were executed, and the *Notice To Proceed* issued for 8/18/08, with construction to last about nine months. Given the very old condition of the building, many unforeseen difficulties had to be addressed, such as rotted wood, as areas were opened up. This led to many changes in the scope of work like rebuilding rotted framing members, repairing hidden foundations, along with additional concrete and steel work. This aside, however, this first phase of construction was completed in September 2009. The short-term impacts from this work were immediately realized. The building's envelope had been fully repaired and restored. The interior of the building now has a clean core and shell, which serves as a logical stopping point at this juncture until the next phase of work can be better discerned.



As stated above, with the completion of the Phase I construction in 2009, it was a good time to take a brief pause from the project in the sense of what to do next? In the wake of the first phase of work, the city was denied \$8 million of federal stimulus funds that it had applied for just before the completion of Phase I, which would have allowed the next phase, in all most likelihood, to be the last phase that would lead to the facility's grand reopening. With this huge loss of funding, it was time to *restrategize*, knowing that there are some core issues facing the project that must be emphasized:

- a) how many seats should be retained in a new finished facility?

b) given condition a, what type of market niche can a new performing arts facility survive in this region; smaller venues can always be conducted in a bigger say 1,000 seat venue, but if seating capacity drops well below this, bigger venues will not be able to be captured in a smaller facility?

c) the driving costs of the next phase are clearly centered upon the new building systems, such as plumbing, HVAC, electrical, audio, lighting and wiring, etc; and not restoration costs per se, and,

d) the realization that the stage has to be expanded both in terms of width and depth in order to allow for *any* type of decent production to take place---and this is a major concern, as this issue itself is the driving one forcing the return in looking at a new rear addition to the theater

With an influx of the new FY'2010 EDI grant funds equal to \$194,800, renewed energies came to the forefront. A new hoped-for partnership with the local Mass College of Liberal Arts (MCLA) was emerged. It was always a *thought process* that MCLA, along with the Mass Museum of Contemporary Art (MoCA), would be some type of aiding partner, helping the city to sustain the theater's rebirth. This thought process has turned into more of a *mission*, in the sense of making MCLA a leading partner, whereby the city could own the theater, with MCLA operating and managing it, unless some form of ownership could be created under the auspices of the college. MCLA has an outstanding art's major program, whereby students can land themselves in their art's theater concentration. With a fully refurbished performing arts facility at their disposal, which is quite a bit more than their campus presently has, this will make for an outstanding venue for them in which to provide teaching and training services. It is this *teaching and training* theme that had emerged that echoed a reverberation for this type of a venture. This will allow MCLA to broaden their art's theater and management concentration, thereby bolstering the overall quality of its art's degree and its accreditation. Students majoring in this field could typically incorporate all four years of their scholastic career to the theater, learning and being responsible for everything from marketing, recruiting shows, the production of plays, ticket sales, performances, food service, special functions, etc; right on down to the custodial services. MCLA would have a clear presence in the downtown, which is seen an improved integration of the college to the downtown. MoCA, who was initially thought of as being more of a major player in the rebirth of the theater, will now actually serve in a lesser, though still important role, through the provision of their management expertise and other technical assistance. Thus, this is the new course of action that the theater had trekked upon in 2010.

To this end, in the first semi-annual reporting period of this EDI funding cycle, the city decided to earmark a modest portion of its new FY'2010 EDI grant funds, \$39,000, in which to utilize its design architect, Finegold-Alexander, to look at what is going to be needed for MCLA to be fully integrated into the Mohawk Theater. A team of designers came out to the MCLA campus in early December 2010, to fully explore their entire art's program in terms of its physical assets, its spaces, types of spaces, specialty concerns, and what types of spaces are needed for this transition to work. This design team completed their investigative work,

and the prime architect, Finegold-Alexander, produced a formidable *Programming Study* dated March 8, 2011. This report put forth several options along with the pros and cons of each, with estimated costs. The steering committee reconvened, along with the design team, to go over this report, which was done shortly after the completion of the report. With additional moneys being sorely needed, especially in significant sums no matter which scenario chosen, the project is essentially in a pause right now. The steering committee still strongly believes that the partnering with MCLA and MoCA is the best course of action to take in the long run. Given this, the cCity and college officials conducted several visionary discussions over the last year, which included a look to the adjacent building on Main Street, so that a possible acquisition of the abutting building could allow for the needed expanded spaces.

During the third, as well as this fourth semi-annual reporting period under this EDI grant term, discussions and strategic plans continued towards this same goal. To further help support this effort, the city was successful in getting a small \$30,000 grant from the *FY'12 Mass Cultural Council's Facilities Grant* program, which will conduct additional feasibility work. This modest sum of money paid for the professional pro-forma analysis and updated cost estimates given the new vision of the theater being *married* to its juxtaposed building on Main Street to its westerly side (Dowlin Building). This analysis was conducted by the firm of Concord Square Planning & Development from Boston, MA, which was also used to help submit a *New Market Tax Credit* package so that future acquisition of the Dowlin Building, along with the renovation of both it and the theater could commence. During this fourth reporting period, there was finally some advancement in the planning stages, as MCLA was willing to pledge some of its own financial resources in which to back the work being conducted by Concord Square Planning & Development, as well as a look at the operational issues centered unto the theater itself. Two rounds of financial analysis had taken place, and continued meetings had ensued with all project players, and it was agreed to modify some of the programmatic assumptions within the first two rounds of financial analysis, and to prepare an updated one, and to continue to meet as events unfolded. For the first time there was a bona fide feeling that a true and effective partnership was finally being established.

During the fifth semi-annual reporting period, it was stated that another tax credit package had been submitted for both the theater and the potential adjoining Dowlin Block, yet this was not funded. Efforts are being made to submit immediately for the next round, which is in progress as of the time of the submission of this report. The project is essentially at somewhat of a standstill as it awaits for the response on these tax credit applications. Further discussions with MCLA continue to be made, as it is still the city's goal in securing them as a bona fide partner. To assist in these efforts, continued pro-forma analysis by the city's business consultant has been done and reviewed with the college so that all parties can stay abreast of all pertinent financial issues and challenges.

During the sixth semi-annual reporting period, the small \$30,000 grant from the MCCF program, as discussed above, was officially closed out. The financial reports and pro-forma analysis will be used to further the partnering discussions with MCLA to see if in fact this idea has merit. Those discussions are slated to resume in the latter part of the winter months of 2014.

This thorough and in-depth analysis as discussed above, albeit not reflective of actual hard-nosed construction work, continues to be needed if a partnership like this is going to make it, and yet even more time is warranted for this new partnering concept to solidify, and essentially where the project now stands as of the end of this semi-annual period (1/31/14). If the City-MCLA partnering concept does not pan out, other avenues will have to be looked to, which again will most likely consider a bump-out addition at the rear of the facility.

During the seventh semi-annual reporting period, discussions with MCLA paused as the work to be taken on by the college was still quite substantial, and something that may have been a bit aggressive for the college to take on. By July 2014 and into 2015, the existing college president left for a new post in North Carolina. It took a considerable amount of time for the college to secure a new president. Essentially, the work put into this visionary effort subsided.

During the last semi-annual period, a modest amount of EDI funds at about \$9,000 were used to do roofing improvements to the theater's marquee that had showed signs of wear since its major restoration from 1999. This completed all of the major work done by the municipality as the 2017 year finished out.

In the end, future programming efforts, now coupled with the design-and-build challenges, will dictate the type of facility it will become. The traditional movie house component will most assuredly remain, featuring its Saturday afternoon matinee, something that was very popular for families and children. Other new programming elements, though, such as small drama for live plays, recitals, a forum for debates, comedy, dances, musicals, and other community-based events, will be incorporated as feasible. The facility has to become a more cultural-based entity with multi-purposes, versus its sole origination as a movie house, if it is going to be an economic catalyst for the local economy.

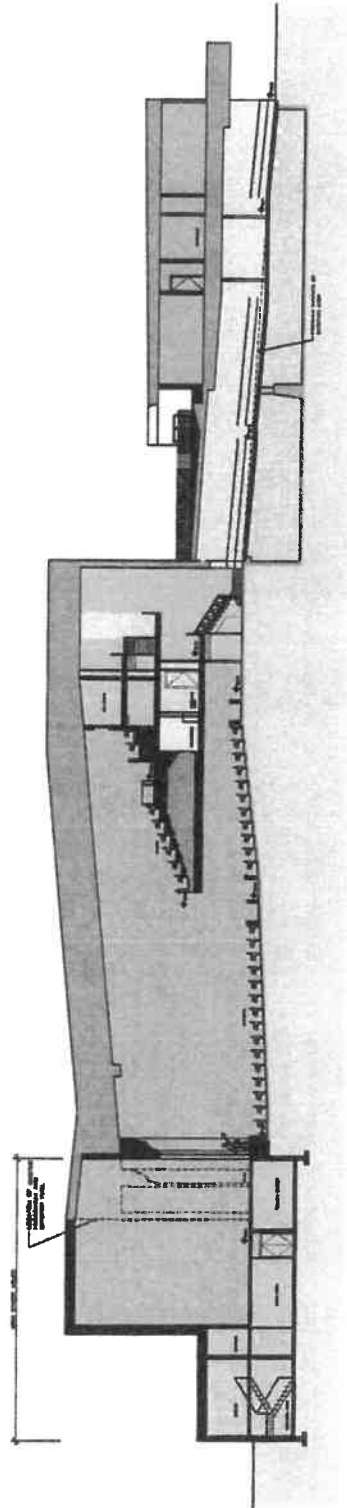


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EXHIBIT III

This section is included to show what the initial plan was by the City of North Adams from 2005. In order to make it into a multipurpose venue, an addition was envisioned at the rear or north section of the building. The existing stage is too small for any type of a formidable performance, and the additional space would also provide for many other supporting functions. Cost estimates at that time were around \$7-8M and the project could not advance due to the exorbitant amount.

The plans shown here are schematic only, yet give the reader a quality look of the facility.

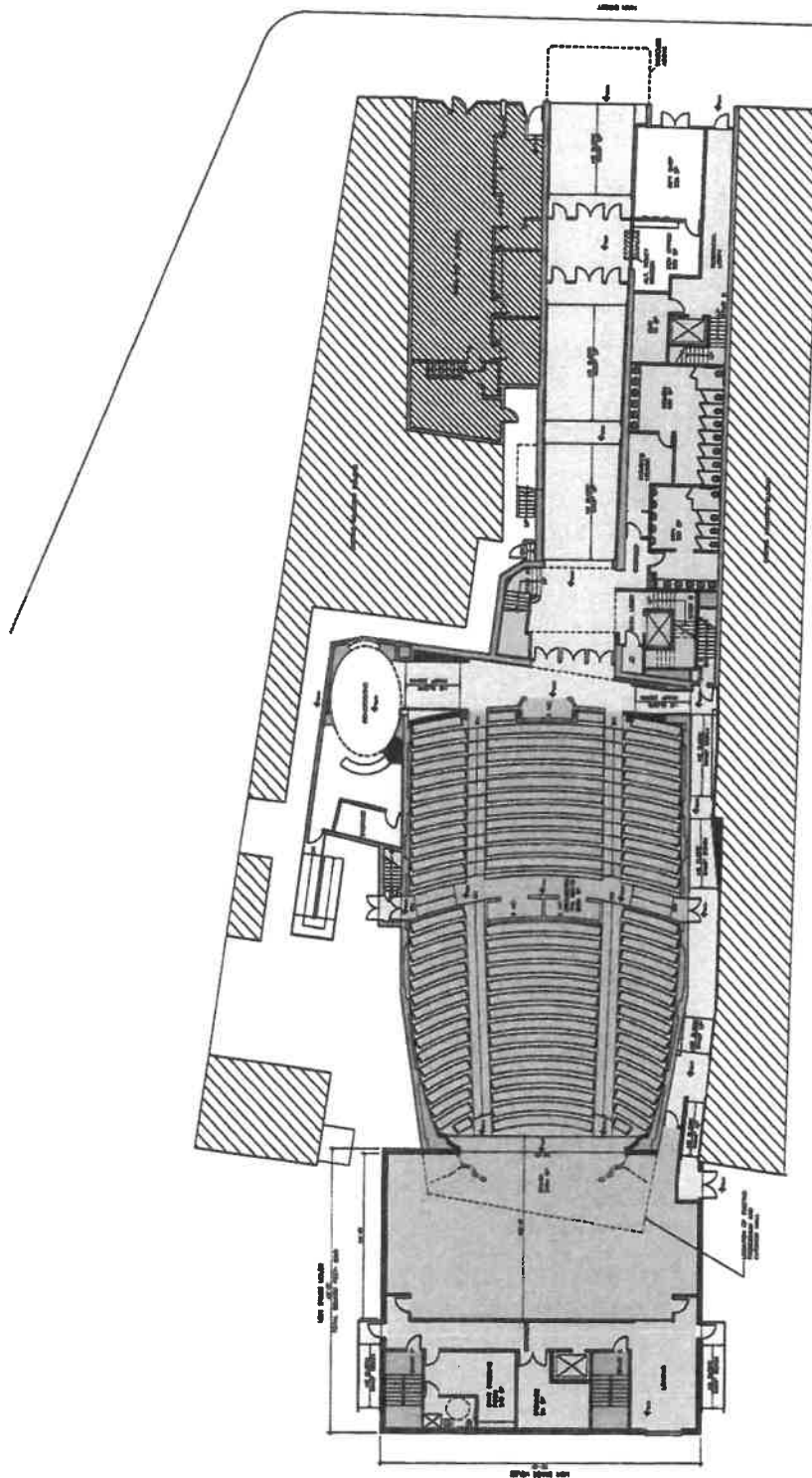


OPTION A: RESIDENTIAL SECTION

MOHAWK THEATER
NORTH ADAMS, MA

For more information, contact:
James H. Hines, Jr.
James H. Hines, Jr.
James H. Hines, Jr.

SEPTEMBER 11, 2005



CSF EXISTING 8,097 SF
 CSF NEW ADDITION 9,971 SF
 CSF TOTAL 17,068 SF



Area Totals

ORCHESTRA	5335 SF
LOBBY	2246 SF
MEZANINE	4064 SF
STAGE	1196 SF
LOBBY	1638 SF
MEZANINE	295 SF
STAGE	127 SF

Theater Seating Capacity

TOTAL SEATING AND ACCESSIBLE SEATING	746
ORCHESTRA	746
LOBBY	406
MEZANINE	406
STAGE	406
LOBBY	406
MEZANINE	406
STAGE	406
LOBBY	406
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STAGE	406

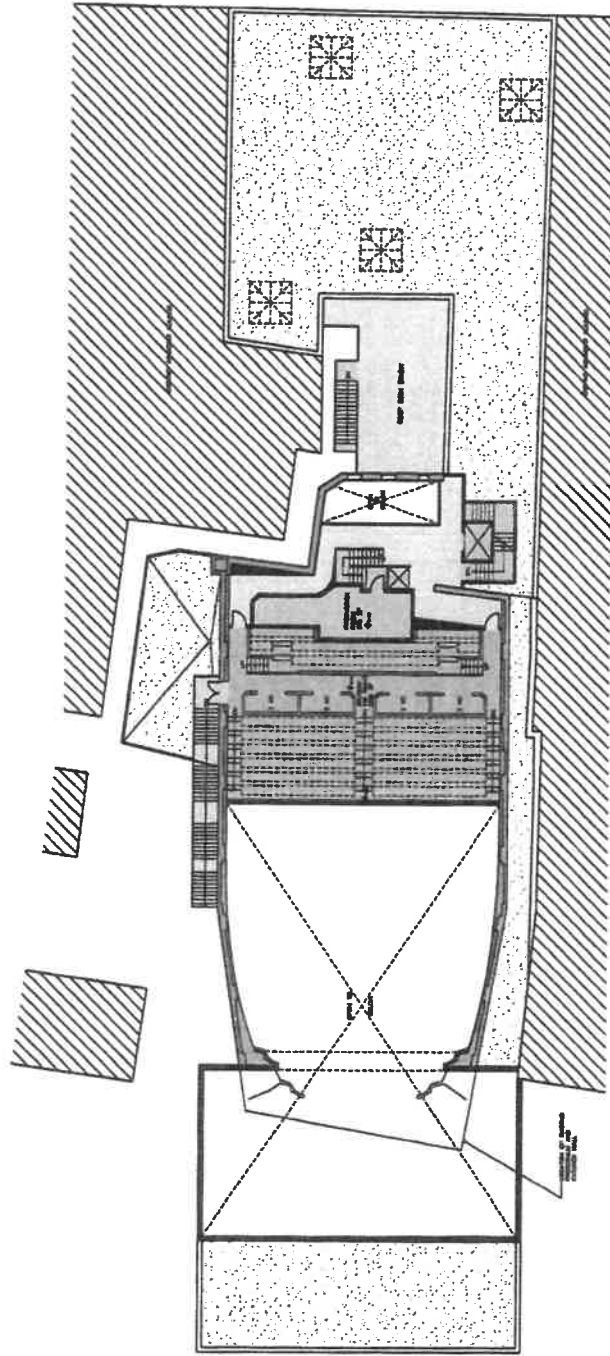
Legend

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OPTION A: RESIDENTIAL ORCHESTRA PLAN

MOHAWK THEATER
 NORTH ADAMS, MA

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 North Adams, MA
 01901-1111



Theater Seating Capacity	
NOVA SEATING 897	
(14 ACCESSIBLE SEATS)	
ORCHESTRA	748
LEFT LOUERS	88
RIGHT LOUERS	88
CENTRAL LOUERS	177
BACK SEATS	84
18 ACCESSIBLE SEATS	
BALCONY	248
LOUERS BALCONY	148
RIGHT BALCONY	148
BACK SEATS	20
18 ACCESSIBLE SEATS	

Legend	
1	Roof / Stage
2	Roof / Stage Support
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Prepared by: **MOHAWK THEATER**
 North Adams, MA
 SEPTEMBER 11, 2008

OPTION A - RESIDENTIAL BALCONY PLAN

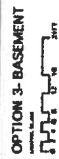




Legend

	Thinner / Stage
	Waster Front of House Support
	Waster Back of House Support
	Thinner Circulation
	Thinner Vertical Circulation
	Reinforced
	Reinforced Corridors
	Reinforced Vertical Circulation
	Rear Deck
	Service
	Open To Below

Thomson Alexander • Associates Inc.
 10000 Douglas Avenue, Inc.
 Dayton Ohio 45424 For the firm call
 513-233-1000



Friedrich Alexander + Associates Inc.
Barrett Building Solutions, Inc.
Morris Hill Pumping Station Inc.
MSPT004674 11.1.2005

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EXHIBIT IV

The commentary included in this section is actual feedback from local residents and other interested parties. Mayor Jennifer Macksey hosted two community input information sessions on May 7 and May 9, 2022, which were conducted at City Hall in its Council Chambers. All persons from the general public were invited and encouraged to attend. These events were hosted by the mayor herself, which put forth a lot of exciting commentary. Other city staff, as well as some City Councilors, were also in attendance.

This information is being offered herein to help a prospective developer to at least gauge the level of local insight that was gleaned from these sessions.

Mohawk Theater Community Input

Monday March 7, 2022

Mayor Macksey welcomed everyone and thanked them for taking the time to attend this community meeting. She said it was important to have community input on the Mohawk Theater, most of us grew up in that theater, and I understand how important it is to the community. The mayor said the sky is the limit. The mayor wants to jazz up the RFP proposal with a section with community comments, so a prospective bidder would know what our community would like to see for the building.

There were about thirty residents in attendance and the mayor was interested in creating a dialogue by asking several questions relating to the Mohawk. How many went the theater to see a movie, to hear a speaker, sporting event, concert, or play? Did any of you go to the theater and sit in the balcony? Most everyone raised their hands. The Mohawk is a very special places in the hearts of the residents.

Mayor Macksey said she would like to hear what the community would like to see. An attendee wondered how much the City owed on the property. The mayor said that the city owed \$56,000 on the loan. An attendee questioned what maintenance needed to be done and noted it will need three to four hundred thousand dollars to bring the theater back to a usable space.

The mayor said all of that will be consider in the RFP, interested parties will be given quality time to walk the property, anything will be on the table. Councilor Bona said that the city should beater when the much stronger in marketing the theater when the RFP is put out and reach out to the theater publications. An attendee would like to see the theater restored back to the 1940's, maybe have a restaurant/brewery with music.

Councilor Barbeau wondered if there was a list of inventories and what has been removed. She would like to see it restored to the period. Councilor Bona said most of the things were taken out by the previous owner. He noted the estimated cost of running the theater would be upwards to \$600,00 a year.

An attendee would like to see the Berkshire Carousal in the theater and possibly merchants could purchase a horse.

An attendee would like to see it open to the public for seasonal use, event space that could be rented.

An attendee would like to see it as a performing arts theater.

An attendee would like to see it as a venue that would cover both the young and old. The name and marquee should stay the same for the next generation.

An attendee summed it up that it appears everyone here wants to restore the theater to what it was.

An attendee wondered if it could be community owned and restored. How can we integrate the community?

An attendee would like to see it as a venue for all residents and it should be affordable to the community.

An attendee does not believe we should not be talking nostalgic, what we need is to go forward in time. We need something that will bring more revenue to the community.

An attendee of Williamstown was involved in the restoration 30 years ago and the study done by Fine Gold Associates noted to restore the theater and bring in in compliance would be significant.

An attendee would like to see it as a recreation center for the youth creating a clean and healthy atmosphere. Virtual activities as well as rock climbing.

An attendee noted a music venue would be a good footprint.

An attendee would like to see it a North Adams Performance Center. Live shows, standup comedy, artist and photography, boxing ring and movies. She feels MOCA could work better with the city to promote the theater.

Councilor Sapienza would like to see used for multi event use. He noted that theaters used strictly for performance sit dark 300 days most of the time.

Councilor Bona noted one thing he has not heard is educational, which is a component for the city, MOCA and the MCLA.

An attendee said she is an avid movie goer, and the theaters are lucky to get 6 people. We should be looking at a venue for the younger generation. We have all had our time and memories at the Mohawk, but it is now time for the next generation.

Mayor Macksey again thanked everyone for their interest and in put in the Mohawk and there is another meeting scheduled for Wednesday March 9th at 6:00 pm.

The meeting concluded at 7:14 pm.

Mohawk Theater Community Input Monday March 9, 2022

Mayor Macksey welcomed everyone and thanked them for taking the time to attend this community meeting. She said it was important to have community input on the Mohawk Theater.

The Mayor wants the RFP proposal to have a section with community comments, so a prospective bidder would know what our community would like to see for the building.

An attendee would like to see something for the kids after school. In the evenings it could be used for adult entertainment.

An attendee thought a multi-purpose use, such as dinner theater, meeting place and maybe a small movie theater.

An attendee noted a performing arts theater/circus in the middle of town would be great. From his experiences you would need more in the downtown to make it more attractive, people need a place to walk.

An attendee said that the developer needs to have a vision and a dream. We really need to market North Adams.

The Mayor said she has been in contact with the new director of MOCA and they are excited about working with the City.

An attendee noted he was interested in the building and he has seen the inside and it is just a shell. There is upper level space would be a good use for apartments. It should be a community vented approach with private investors.

An attendee said we need to make Main Street vibrant again.

An attendee noted a collaboration of several investors maybe the way to go, to make it more profitable.

An attendee noted the RFP should have wider options.

A

n attendee said the other piece to this is the cost to refurbish the theater.

Someone asked about the condition of the roof.

Michael Nuvallie, Community Development Director said there has been 2.4 million dollars invested to stabilize the building. There will be a large cost to bring the building up to code. The real opportunity lies in the upper part of the building.

An attendee said these are all great ideas, but we need to lower our expectations, it needs to be more profitable. Let's wait to see what the RFP brings.

An attendee noted she was well aware of the history of MCLA exploring the possibilities of the college using it as a learning place for the arts students but the cost was too high for it to be profitable.

An attendee said the timing of the RFP should be longer.

The Mayor noted there would be more time for developers to view the building, a one-time walk through is certainly not enough.

An attendee said there should be conversation on how it is going to be funded.

An attendee said in order to survive it needs to be multi-purpose. The idea of multiple investors is something to think about.

The Mayor thanked everyone for their input and encouraged them to contact her with any ideas they may have.

The meeting concluded at 7:02 pm.