ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT FOR CARVER THEATRE

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the "Agreement"), is made and entered into this 16th day of October, 2008 (the "Effective Date"), by and between the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the "City"), the **CITY OF ORLANDO, FLORIDA, COMMUNITY REDEVELOPMENT AGENCY**, a Florida public agency duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the "CRA"), and **CARVER THEATRE DEVELOPERS, LLC**, a Florida limited liability company duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and currently having its principal place of business at 315 E. Robinson St., Suite 660, Orlando, Florida 32801 (the "Developer").

WITNESSETH

WHEREAS, Developer is owner of approximately 1.27 acres of real property located north of W. Church St., south of W. Central Blvd., east of Glenn Ln., and west of S. Parramore Ave., within the City's Downtown Community Redevelopment Area (the "Downtown Redevelopment Area"), and being more particularly described by the legal description attached hereto and incorporated herein, by reference, as **Exhibit "A"** (the "Property"); and

WHEREAS, Developer intends to develop the Property with a mixed-use midrise structure containing (i) an approximately 320-seat multiuse performing arts theatre occupying approximately 8,400 square feet of space (the "Theatre"), (ii) approximately 21,000 square feet of ground floor retail use (the "Retail Space"), of which a minimum of 5000 square feet shall be dedicated to the use of the Incubator Program (the "Incubator Space"), (iii) approximately 60,000 square feet of office use (the "Office Space"), (iv) approximately 17 multifamily residential units (the "Residential Space"), and (v) an integrated parking garage containing approximately 302 parking spaces (the "Parking Structure", and together with the Theatre, Retail Space, Incubator Space, Office Space and Residential Space, the "Project"); and

WHEREAS, the Legislature of the State of Florida has found and declared, and the City Council of the City of Orlando, Florida (the "Orlando City Council"), and the governing board of the CRA hereby find and declare, that it constitutes a public purpose to expend public funds, including tax increment financing, for economic development activities within a community redevelopment area, including, but not limited to, developing or improving local infrastructure, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community; and

City Council Meeting: 10-6-08
Item: 4-6 / 6-1 Documentary: 081006406 (CRA) 081006601 (NB)

WHEREAS, on February 11, 1980, the City Council of the City of Orlando, Florida (the "Orlando City Council"), adopted a resolution entitled "*A Resolution Finding a Necessity Exists for the Rehabilitation, Conservation or Redevelopment of Slum or Blighted Areas That Exist Within the City and Authorizing a Community Redevelopment Agency.*" (Documentary #15407), in which the Orlando City Council found and determined that certain land lying within the jurisdictional boundaries of the City of Orlando, Florida, constituted slum and blight conditions and qualified as an eligible project under Chapter 163, Florida Statutes, and that the rehabilitation, conservation, or redevelopment, or some combination thereof, of said area is necessary and in the best interest of the public health, safety, and welfare or the residents of the City of Orlando, Florida; and

WHEREAS, Developer has requested that the City and the CRA provide certain economic development incentives related to the redevelopment of the Property and the revitalization of the area around the Property; and

WHEREAS, the City and CRA are committed to the continual redevelopment and revitalization of downtown Orlando and the Downtown Redevelopment Area, and like many local governments and redevelopment agencies, have focused on economic development to improve the local economy by attracting business, creating jobs, and preserving and enhancing the tax base; and

WHEREAS, the City and CRA, finding it to be in the best interest of the City and the CRA, and in the best interest of the health, safety, and welfare of the citizens of Orlando, have offered to facilitate a portion of the redevelopment and revitalization Project with the expectation that the City's and CRA's involvement will encourage and accelerate the timing of the redevelopment, thus generating additional tax increment revenues in the Downtown Redevelopment Area, and will result in enhanced economic benefits to downtown Orlando with respect to the stability and potential for future development of properties adjacent to and near the Property; and

WHEREAS, City and CRA hereby find that this Agreement promotes a valid and important public purpose and is in the best interest of the public health, safety, and welfare of the citizens of the City of Orlando, Florida; and

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, each to the other provided, the receipt and sufficiency of which is hereby acknowledged by all parties hereto, City, CRA, and Developer agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are hereby incorporated into and made a part of this Agreement as if fully set forth hereinafter.

2. **Definitions**. The following terms shall be defined and have the meaning set forth herein;

2.1 "Certificate of Occupancy" or "CO" means a certificate of occupancy, or such other functionally equivalent approval, as applicable, issued for the Project, or any portion thereof, by the City in its capacity as a regulatory authority.

2.2 "Certificate of Completion" or "C of C" means a certificate of completion issued for the Project, or any portion thereof, by the City in its capacity as a regulatory authority.

2.3 "Commence Construction" or Commencement of Construction" means the date that the Project receives an approved foundation inspection.

2.4 "Construction Contract Documents" means the Prime Construction Contract and all amendments thereto incorporating the final construction plans, drawings, specifications and all other reasonably necessary documents for the design, planning, permitting and construction of the Project, and shall include the Plans and Specifications, and all change orders executed or issued subsequent to the date of the Prime Construction Contract.

2.5 "Developer Event" shall mean an event at the Theatre.

2.6 "Final Completion" means the level of completion of the Work occurring after Substantial Completion wherein all Punchlist Items have been completed and accepted by the Developer and final completion of the Project has been certified by the Design Architect.

2.7 "Plans and Specifications" means such program statements, schematics, plans, drawings and documents as may be required to fix and describe the size, character and design of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate approved by the City in its capacity as a regulatory authority.

2.8 "Public Event" shall mean an event at one or more of the following City-owned venues: Orlando Events Center and Citrus Bowl.

2.9 "Punchlist Items" shall mean those minor items identified during inspection which are at variance with the Construction Contract Documents and the Plans and Specifications as of Substantial Completion, and which do not materially interfere with the use and occupancy of any part of the Project for its intended use.

2.10 "Substantial Completion" means the level of completion of the Work wherein (a) such Work has no material defects or deviations from the Construction Contract Documents, (b) the Project can be used and operated for its intended purpose, (c) Developer shall have obtained applicable governmental approvals and permits, including, but not limited to, a Certificate of Occupancy, (d) only Punchlist Items remain to be completed in order to achieve Final Completion, and (e) with respect to the Theatre a public event may be legally conducted at the Theatre.

2.11 "Vanilla Box" means that the interior condition of the building, unit, space, etc. consists of completed and operational heating/cooling with delivery systems, life safety systems, lighting, electrical switches and outlets, lavatories, plumbing, a finished ceiling, walls prepped for painting, and a concrete slab floor.

2.12 "Work" means all obligations, duties, and responsibilities required to complete construction of the Project in accordance with the Construction Contract Documents.

3. **Project.**

3.1 **Design.** Developer shall contract with a licensed and certified architect to design the Project (the "Design Architect") in accordance with all applicable laws, codes,

statutes, ordinances, rules and regulations, including, but not limited to, the Orlando City Code, Florida Building Code and Americans With Disabilities Act (the "ADA"). In addition, the Developer may also contract with one or more professional engineers, consultants, and design professionals relating to the design and development of the Project (the "Design Professionals"). The Developer shall incorporate substantial building materials and high quality design to achieve outstanding civic architecture. The parties acknowledge that the Developer has made a reasonable effort to use a local design team for the Project design. The Developer will immediately notify the City and CRA in writing if any material changes to the approved design of the Project become necessary or may become necessary.

(i) **Design Phase Progress Meetings**. The Developer will conduct, and invite the City and CRA to attend, meetings with the Design Architect and Design Professionals and any other appropriate parties at intervals that the Developer deems appropriate, but at least monthly, to discuss the progress of the design phase of the Project.

(ii) **Professional Liability Insurance**. The Developer shall cause the Design Architect to procure and maintain professional liability (errors and omissions) insurance, covering all claims arising out of its services performed under its contract with the Developer in a minimum amount of coverage of $2,000,000.00 per occurrence, $4,000,000.00 annual aggregate. The Developer shall cause the Theatre Architect and other Design Professionals to procure and maintain professional liability (errors and omissions) insurance, covering all claims arising out of its services performed under their respective contracts with the Developer in a minimum amount of coverage of $1,000,000.00 per occurrence, $2,000,000.00 annual aggregate.

(iii) **Design Schedules**. The Developer shall submit to City and CRA a detailed design schedule showing the scheduled delivery date for schematic design, development drawings, 50% Construction Contract Documents, and 100% Construction Contract Documents.

(iv) **Construction Schedule and Estimate**. Prior to the issuance of a building permit for the Project, or any portion thereof, the Developer shall submit to the City and CRA a preliminary schedule for final design and construction of the Project (the "Preliminary Construction Schedule"), and an estimate of the final design and construction costs of the Project (the "Construction Estimate"). The Developer will provide the City and CRA with updates to the Preliminary Construction Schedule and Construction Estimate if there are any changes or anticipated changes thereto during the construction of the Project.

(v) **Spend Down Schedule**. Prior to the issuance of a building permit for the Project, or any portion thereof, the Developer shall provide the City and CRA with a spend down schedule, and periodic updates thereto, which identifies the estimated amount and timing of each Parking Construction Draw Request and Incubator & Theatre Draw Request that the Developer reasonably anticipates to submit pursuant to sections 4.1 and 5.1 hereinbelow.

3.2 **Construction.** The Developer shall contract (the "Construction Contract") with a licensed and qualified general contractor(s) to construct all or a portion of the Project on the Property (the "Prime Contractor") in a good, safe and workmanlike manner and consistent with the Construction Contract Documents, and all the materials furnished and used in connection therewith shall be new (unless otherwise indicated) . In addition to the Prime Contractor, the Developer may also contract with one or more contractors relating to the development, construction, furnishing or equipping of the Project (the "Contractors"). The Project shall be constructed in accordance with all applicable laws, codes, statutes, ordinances, rules and regulations, including, but not limited to, the Orlando City Code, Florida Building Code and the ADA.

(i) **Critical Path Method Schedule**. The Developer shall require the Prime Contractor to submit to Developer and City, within thirty (30) days of the execution of the Prime Construction Contract, a complete and detailed critical path method schedule (" CPM Schedule"), regularly maintain and update the CPM Schedule, and submit to Developer and City a revised CPM Schedule reflecting any changes thereto. Should Prime Contractor fail to meet any of the critical path dates for reasons other than those for which Prime Contractor is entitled to an extension of time under the Construction Contract Documents, the Developer shall require the Prime Contractor to submit to Developer and City a recovery plan necessary to return to the CPM Schedule.

(ii) **Construction Status Report**. The Developer will provide the City and CRA with a monthly construction status report showing in detail the status of all construction on the Property.

(iii) **Progress Meetings**. The Developer will conduct, and invite the City and CRA to attend, periodic progress meetings at least one (1) time per month to discuss the progress of the development of the Project through substantial completion.

(iv) **Contractor Insurance**. The Developer shall require the Prime Contractor and Contractors to procure and maintain the types and amounts of insurance coverage set forth in **Exhibit "B"**, attached hereto and incorporated herein, by reference. The City, CRA and Developer shall be named as additional insured on all such policies, except workers compensation coverage. Prior to the commencement of construction of the Project, the Developer shall provide the City and CRA with a certificate of insurance evidencing the required coverage, and shall furnish the City and CRA with evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy. All such insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, who are licensed and authorized to do business under the laws of the State of Florida or in the case of surplus carriers must meet the requirements specified in Section 626.915, Florida Statutes..

(v) **Punchlist Items**. The Developer shall prepare (or have prepared) and submit to the City and CRA a written description of the form and scope of all Punchlist Items and a schedule setting forth the estimated time and value for completion of the Punchlist Items.

(vi) **Expedited Processing of Construction Permits.** Developer or its authorized representative, assignee or agent shall submit to the City such applications and documentation and comply with such requirements and procedures as are normally and customarily required for obtaining permits required to be issued by City in its capacity as a regulatory authority for the construction of the Project. The City shall use its reasonable best efforts to expedite processing of such construction permits in an effort to assist the Developer in achieving its development and construction milestones.

3.3 **Streetscape.** The Developer shall replace the existing streetscape located adjacent to the Project that is damaged or removed during the construction of the Project, and shall install new streetscape improvements along S. Parramore Avenue from Church Street to Pine Street. All such replacement and installation of streetscape improvements shall comply with the CRA Downtown Streetscape Design Guidelines. The Developer may be eligible for reimbursement of a portion of the cost to install new streetscape improvements on S. Parramore Avenue pursuant to the CRA's streetscape reimbursement program. The City shall install new streetscape improvements along Church Street from Parramore Avenue to Lee Avenue.

3.4 **Residential Space.** The Residential Space shall be constructed to shell level without tenant improvements so that the shell of the Residential Space is in a condition sufficient for the issuance of a C of C.

3.5 **Public Parking Spaces.** The capital cost of the construction of 281 of the approximately 302 parking spaces within the Parking Structure (the "Public Parking Spaces") will be funded by the City and CRA pursuant to sections 4 and 6 hereinbelow, and, due to the need for public parking in the vicinity of the Project, and as consideration for the City and CRA providing funding for the Public Parking Spaces, the Developer agrees that such Public Parking Spaces shall be dedicated to the long term use of the public. The exact nature, scope and timing of such public use, and provisions for the operation and maintenance of the Public Parking Spaces and the Parking Structure, shall be set forth in appropriate documents and agreements executed by the City and Developer, including a use and operation agreement. The parties shall cooperate to ensure the timely execution and delivery of the appropriate documents to accomplish the purposes set forth herein, including the efficient operation of the Parking Structure and use of the Public Parking Spaces by the public. In general, the terms and conditions of the use of the Public Parking Spaces and operation of the Parking Structure shall be substantially similar to the following:

(i) The Public Parking Spaces shall be available for the use of the general public from 6:00 P.M. to 12:00 A.M. (Midnight), Monday through Friday, and from 10:00 A.M. to 1:00 A.M. Saturdays and Sundays (the " Public Parking Hours"). The operating hours of the Parking Structure shall be comparable to operating hours of City-owned parking garages in downtown Orlando.

(ii) The fee charged for the use of the Public Parking Spaces during the Public Parking Hours shall be comparable to parking fees at other public parking garages in the near vicinity of the Parking Structure.

(iii) For parking associated with a Public Event occurring during the Public Parking Hours, the City shall retain 100 % of the net income derived from the Public

Parking Spaces during the Public Parking Hours. For parking associated with a Developer Event occurring during the Public Parking Hours, the Developer shall retain 100 % of the net income derived from the Public Parking Spaces during the Public Parking Hours. For parking associated with a Public Event and Developer Event occurring simultaneously during the Public Parking Hours, or if neither a Public Event nor Developer Event occurs during the Public Parking Hours, the City and Developer shall each retain 50% of the net income derived from the Public Parking Spaces during the Public Parking Hours. The Developer shall retain 100 % of the net income derived from the Public Parking Spaces during non-Public Parking Hours. In order to accurately audit, track and verify the net income derived from the Public Parking Spaces during the Public Parking Hours, the Developer shall establish a method reasonably acceptable to the City to distinguish between income derived from the Public Parking Spaces during the Public Parking Hours and income derived from Public Parking Spaces during non-Public Parking Hours.

(iv) Upon the mutual, written agreement of the parties, the Developer may utilize the City as the operator of the Parking Structure, the terms and conditions of which shall be set forth in the use and operation agreement referenced hereinabove.

3.6 **Incubator Space.** The capital cost of construction of the Incubator Space will be funded by the CRA pursuant to section 5 hereinbelow, and as consideration for the CRA providing funding for the construction of the Incubator Space, such space will be dedicated to the long term use of the Incubator Program and its participants as set forth herein. The interior of the Incubator Space shall be constructed to "Vanilla Box" level. The Developer will establish and operate, or cause the Black Business Investment Fund of Central Florida, Inc. (the "BBIF"), or other similar organization (the "Incubator Program Operator"), to establish and operate a general business incubator that will provide management guidance, technical assistance and consulting tailored to young, growing companies, and will provide access to office space, shared equipment, technology support and assistance in obtaining financing necessary for company growth (the "Incubator Program"). The Incubator Program will be an economic development tool designed to accelerate the growth and success of entrepreneurial companies through an array of business support resources and services developed or orchestrated by incubator management and offered both in the incubator and through a network of contacts. Companies that utilize the services of the Incubator Program have the potential to create jobs and wealth, revitalize neighborhoods, commercialize new technologies and strengthen local, regional, and national economies. Clusters of firms in an incubator derive strength from working with one another, thus encouraging innovation. The goal of the Incubator Program is to produce successful firms that will graduate from the Incubator Program financially viable and freestanding. Subject to the Incubator Program Operator's receipt of funding for operations, programming, tenant build-out and equipment, the Incubator Program will be operated within the Incubator Space on a full time basis for a minimum period of ten (10) years from the date of Substantial Completion of the Project. Prior to the opening of the Incubator Space, an operations agreement between the City and the Incubator Program Operator (the "Incubator Space Operations Agreement") must be approved by the CRA Director or his designee, which agreement may include the funding referenced in the preceding sentence. The Incubator Space Operations Agreement will address the minimum number of physical companies (companies that have a physical presence within the

Incubator Space) and virtual companies (companies that are not physically located in the Incubator Space, but pay a fee to use secretaries, boardroom space, technical assistance, etc.) served by the Incubator Program and the rental rates and fees for such companies. A violation of the Incubator Space Operations Agreement will be deemed a violation of this Agreement. The Developer will submit to the City, or cause the operator of the Incubator Program to submit to the City, a quarterly report of the services, activities, and participants of the Incubator Program.

3.7 **Theatre.** The capital cost of the construction of the Theatre will be funded by the CRA pursuant to sections 5 and 6 hereinbelow, and as consideration for the City and CRA providing funding for the Theatre, such Theatre shall comply with the following requirements:

3.7.1 **Theatre Architect**. Developer shall contract with a licensed and certified architect with experience in theatre design to design the Theatre (the "Theatre Architect") in accordance with all applicable laws, codes, statutes, ordinances, rules and regulations, including, but not limited to, the Orlando City Code, Florida Building Code and the ADA. The Developer shall require that the Theatre Architect coordinate its design with the Project Architect to ensure that the Theatre design plans are properly incorporated into the design plans for the Project.

3.7.2 **Theatre Operator**. The Developer shall hire a licensed and qualified theatre operator to provide the necessary services for the efficient operation, maintenance and repair of the Theatre in conformance with operating standards typically associated with the operation of a comparably sized and designed theatre (the "Theatre Operator"). The CRA Director or his designee will be a member of the non-profit board of directors of the Theatre, and will have the right to review and comment on the operating agreement between the Developer and Theater Operator, which agreement will provide for operating hours, operating standards, events per year, scheduling, booking, staffing, programming, marketing, maintenance, repair, security, insurance, etc., and will include the following phases of operation:

3.7.3 **Pre-Opening Phase**. Prior to Substantial Completion and continuing until the opening of the Theatre and the commencement of the Operations Phase (the "Pre-Opening Phase"), the Developer shall ensure that the Theatre Operator provides all services needed for the Theatre to commence operations, including, but not limited to, the following:

(i) creation and implementation of a pre-opening plan and budget which outlines the primary marketing, staffing and other activities to be performed during the Pre-Opening Phase (the "Pre-Opening Plan & Budget");

(ii) preparation and implement of a pre-opening marketing plan that addresses promotional and advertising activities to be conducted during the Pre-Opening Phase (the "Pre-Opening Marketing Plan");

(iii) preparation and implementation of a programming plan that addresses education, community programming and presenting performances (the "Pre-Opening Programming Plan");

(iv) booking events for the Theatre, including, but not limited to local performing arts groups, local school groups, national touring companies, education tours and events, and special events;

(v) recruitment, training and employment of staff required to operate the Theatre;

(vi) negotiation and execution of any contracts, leases or other agreements required for the management and operation of the Theatre;

(vii) application and acquisition of all licenses and permits required in connection with the management and operation of the Theatre.

Prior to Substantial Completion of the Theatre, The Developer shall provide the City and CRA with a copy of the Pre-Opening Plan & Budget, Pre-Opening Marketing Plan, and Pre-Opening Programming Plan for their review and comment.

3.7.4 **Operating Phase**. Upon conclusion of the Pre-Opening Phase the Developer shall ensure that the Theatre Operator operates the Theatre in accordance with operating standards and functions typically associated with the operation of a comparably sized and designed theatre, including, but not limited to the following:

(i) preparation and implemention of an annual marketing plan that addresses promotional and advertising activities to be conducted prior to and after the Theatre opening date (the Annual Marketing Plan");

(ii) preparation and implemention of an annual programming plan that addresses education, community programming and presenting performances (the Annual Programming Plan");

(iii) preparation and implementation of an annual operating plan and budget (the "Annual Operating Plan & Budget");

(iv) recruitment, training and employment of staff required to operate the Theatre;

(v) booking events for the Theatre, including, but not limited to local performing arts groups, local school groups, national touring companies, education tours and events, and special events;

(vi) negotiation and execution of any contracts, leases or other agreements required for the management and operation of the Theatre;

(vii) the provision of security, maintenance and repair to the Theatre in a manner that insures that the Theatre provides a safe environment for patrons, performers, vendors, tenants, licensees and other users of the Theatre; and

(viii) application and acquisition of all licenses and permits required in connection with the management and operation of the Theatre.

The Developer shall provide the City and CRA with a copy of the Annual Marketing Plan, Annual Programming Plan, and Annual Operating Plan & Budget for their review and comment.

4. **Parking Construction Funds**. Subject to the conditions set forth in this Agreement, the City will provide construction funds to the Developer in an aggregate principal amount not to exceed $6,335,000 for the purpose of partially or fully funding the capital cost of

the Public Parking Spaces (the "Parking Construction Funds"). The Parking Construction Funds shall only be utilized by the Developer to pay for design and construction costs directly related to the Public Parking Spaces, and no other costs shall be paid with the Parking Construction Funds. Within 90 days of the Effective Date of this Agreement, the Parking Construction Funds will be placed in a separate escrow account (the "Parking Construction Escrow") under the control of the City's Chief Financial Officer (the "CFO"). Funds within the Parking Construction Escrow will be released to Developer to pay for costs directly related to the Public Parking Spaces in accordance with this section 4.

4.1 **Parking Construction Draw Request.** Each month, the Developer shall prepare and submit to the CFO a request for disbursement from the Parking Construction Escrow in substantially the form attached hereto as **Exhibit "C"** ("Parking Construction Draw Request"). Such Parking Construction Draw Request shall be certified as true and correct by the Developer to the best of its knowledge and belief and shall include the following:

(i) a copy of the application for payment from each payee for whom payment is being requested and a statement setting forth (A) the name, address and federal taxpayer identification number of each payee, (B) the amounts to be paid, (C) a description of the work provided by each payee, and (D) invoices and other supporting documentation reasonably acceptable to the CFO.

(ii) to the extent applicable, a conditional partial waiver of lien from each payee covering all work performed by such payee since the last payment application of such payee. The final Parking Construction Draw Request shall include a final waiver of lien from each payee.

(iii) the most recent schedules of values, if applicable, which schedules of values shall allocate the applicable GMP or fixed contract sum among the various portions of the work relating to the Project, including the Parking Structure, and shall identify the percentage of that portion of the Work that has actually been completed.

4.2 **Parking Construction Draw Request Submittal Date.** The period covered by each Parking Construction Draw Request shall be one (1) calendar month ending on the last day of the month. The Parking Construction Draw Request shall be delivered to the CFO on or before the fifteenth 15th (15th) business day of the next calendar month following the period covered by the Parking Construction Draw Request (the "Parking Construction Draw Request Submittal Date"). If a Parking Construction Draw Request is not submitted by the Parking Construction Draw Request Submittal Date, then the same shall be included in the next month's Parking Construction Draw Request.

4.3 **Parking Construction Draw Request Review and Disbursement Procedures.** Upon delivery of each Parking Construction Draw Request to the CFO, the procedure for review and approval of such Parking Construction Draw Request and the disbursement of the Parking Construction Funds from the Parking Construction Escrow shall be as follows:

(i) Within three (3) Business Days of each Parking Construction Draw Request Submittal Date, the City shall review the Parking Construction Draw Request and notify the Developer in writing of its approval or disapproval of same. If the City

disapproves all or any portion of any Parking Construction Draw Request, the City shall specify in writing, within the foregoing three (3) Business Day review period, its objections and the parties shall follow the procedures set forth in section 4.5 below.

(ii) Within three (3) business days after the Parking Construction Draw Request Submittal Date (but subject to Section 4.5 below), the CFO shall deliver to the Developer checks drawn on the Parking Construction Escrow and made payable to the applicable payees sufficient to pay undisputed costs as reflected in the applicable Parking Construction Draw Request (the "Parking Construction Escrow Checks").

(iii) Within seven (7) business days after its receipt of the Parking Construction Escrow Checks, the Developer shall deliver such checks to the various payees for the payment of undisputed costs of the Public Spaces. Simultaneously with, and as a condition of, the delivery of such checks, Developer shall collect and receive unconditional partial lien waivers from each payee covering all work (and invoices) covered by the applicable Parking Construction Draw Request for which payment is being made pursuant to this Section. Such unconditional partial lien waivers shall be received by Developer in exchange for payment, and Developer shall not deliver any check for payment as contemplated in this Section unless the Developer receives simultaneously with the delivery of such check the unconditional partial lien waiver covering the work (and invoice) for which payment is being made pursuant to such check. The Parties intend that the Parking Structure be designed, constructed, furnished and equipped free of liens and claims, and the Developer agrees to cause the same to occur and shall require the execution and delivery of any other forms necessary to assure the effective waiver of construction and other liens and claims in compliance with the laws of the State of Florida. The Developer shall promptly deliver to the City copies of all such unconditional partial lien waivers and any other proof of payment indicating its performance and satisfaction of this Section.

4.4 **Parking Construction Funds Retainage.** The City will retain 10% of the amount of each Parking Construction Draw Request (excluding Parking Construction Draw Zero) until such time as the Developer provides the City with a certificate from the Design Architect demonstrating and certifying 50% completion of the Parking Structure, after which time the City will retain 5% of the amount of each Parking Construction Draw Request. Such retainage will be released by the City to the Developer upon Substantial Completion of the Parking Structure.

4.5 **Disapproval of Parking Construction Draw Request.** In the event the City disapproves any portion of a Parking Construction Draw Request, then within the three (3) Business Day review period specified in Section 4.3(i) above, the City shall deliver to Developer, written notice of its disapproval, which notice shall specify in reasonable detail the reasons for the disapproval. If such written notice of disapproval is not delivered to the Developer within three (3) Business Days after the Parking Construction Draw Request Submittal Date, then the Parking Construction Draw Request shall be deemed approved in its entirety and the parties shall proceed with the disbursement of funds and payment of invoices as set forth in this Section 4. Developer shall have the right to amend a Parking Construction Draw Request as reasonably required to address the written disapproval of the City. Regardless of

whether an amended Parking Construction Draw Request is received, the CFO shall make checks payable to the appropriate payees as provided in section 4.3(ii) above for those portions of each Parking Construction Draw Request for which no written objection to payment has been made by the City within the time period prescribed above. With respect to a Parking Construction Draw Request (or any portion thereof) for which an objection is properly made, such disputed portion shall not be paid and the payment dispute shall be submitted to Dispute Resolution pursuant to Section 8 below.

4.6 **Initial Parking Construction Draw Request.** Notwithstanding the loan closing requirement of subsection 9.1 herein, within ten (10) days of the Effective Date, the Developer may submit an initial draw request to the City in an amount not exceeding $585,362.00 for reimbursement of Parking Structure costs incurred prior to the Effective Date ("Parking Construction Draw Zero"). Parking Construction Draw Zero shall be in substantially the form set forth in Exhibit C, and the requirements and procedures contained in subsections 4.1, 4.3, and 4.5 (but not subsections 4.2 and 4.4) shall apply to the submittal and disbursement thereof.

5. **Incubator & Theatre Construction Funds**. Subject to the conditions set forth in this Agreement, the CRA will provide construction funds to the Developer in an aggregate principal amount not to exceed $3,165,000 for the purpose of funding the capital cost associated with construction of the Incubator Space and Theatre within the Project (the "Incubator & Theatre Construction Funds"), of which $1,979,145 will be allocated to the cost of the Incubator Space, and $1,185,855 will be allocated to the cost of the Theatre. The Incubator & Theatre Construction Funds shall only be utilized by the Developer to pay for design and construction costs directly related to the Incubator Space and Theatre, and no other costs shall be paid with the Incubator & Theatre Construction Funds. Within 90 days of the Effective Date of this Agreement, the Incubator & Theatre Construction Funds will be placed in a separate escrow account (the "Incubator & Theatre Escrow") under the control of the CFO. Funds within the Incubator & Theatre Escrow will be released to Developer to pay for costs directly related to the Incubator Space and Theatre in accordance with this section 5.

5.1 **Incubator & Theatre Draw Request**. Each month, the Developer shall prepare and submit to the CFO a request for disbursement from the Incubator & Theatre Escrow in substantially the form attached hereto as **Exhibit "D"** ("Incubator & Theatre Draw Request"). Such Incubator & Theatre Draw Request shall be certified as true and correct by the Developer to the best of its knowledge and belief and shall include the following:

(i) a copy of the application for payment from each payee for whom payment is being requested and a statement setting forth (A) the name, address and federal taxpayer identification number of each payee, (B) the amounts to be paid, (C) a description of the work provided by each payee, and (D) invoices and other supporting documentation reasonably acceptable to the CFO.

(ii) to the extent applicable, a conditional partial waiver of lien from each payee covering all work performed by such payee since the last payment application of such payee. The final Incubator & Theatre Draw Request shall include a final waiver of lien from each payee.

(iii) the most recent schedules of values, if applicable, which schedules of values shall allocate the applicable GMP or fixed contract sum among the various portions of the work relating to the Incubator & Theatre and shall identify the percentage of that portion of the work that has actually been completed.

5.2 **Incubator & Theatre Draw Request Submittal Date.** The period covered by each Incubator & Theatre Draw Request shall be one (1) calendar month ending on the last day of the month. The Incubator & Theatre Draw Request shall be delivered to the CFO on or before the fifteenth (15th) Business Day of the next calendar month following the period covered by the Incubator & Theatre Draw Request (the "Incubator & Theatre Draw Request Submittal Date"). If an Incubator & Theatre Draw Request is not submitted by the Incubator & Theatre Draw Request Submittal Date, then the same shall be included in the next month's Incubator & Theatre Draw Request.

5.3 **Incubator & Theatre Draw Request Review and Payment Procedures.** Upon delivery of each Incubator & Theatre Draw Request to the CFO, the procedure for review and approval of such Incubator & Theatre Draw Request and the disbursement of the Incubator & Theatre Construction Funds from the Incubator & Theatre Escrow shall be as follows:

(i) Within three (3) Business Days of each Incubator & Theatre Draw Request Submittal Date, the City shall review the Incubator & Theatre Draw Request and notify the Developer in writing of its approval or disapproval of same. If the City disapproves all or any portion of any Incubator & Theatre Draw Request, the City shall specify in writing, within the foregoing three (3) Business Day review period, its objections and the parties shall follow the procedures set forth in section 5.5 below.

(ii) Within three (3) business days after the Incubator & Theatre Draw Request Submittal Date (but subject to Section 5.5 below), the CFO shall deliver to the Developer checks drawn on the Incubator & Theatre Escrow and made payable to the applicable payees sufficient to pay undisputed costs as reflected in the applicable Incubator & Theatre Draw Request (the "Incubator & Theatre Escrow Checks").

(iii) Within two (2) business days after its receipt of the Incubator & Theatre Escrow Checks, the Developer shall deliver such checks to the various payees for the payment of undisputed costs of the Incubator Space and Theatre. Simultaneously with, and as a condition of, the delivery of such checks, Developer shall collect and receive unconditional partial lien waivers from each payee covering all work (and invoices) covered by the applicable Incubator & Theatre Draw Request for which payment is being made pursuant to this Section. Such unconditional partial lien waivers shall be received by Developer in exchange for payment, and Developer shall not deliver any check for payment as contemplated in this Section unless the Developer receives simultaneously with the delivery of such check the unconditional partial lien waiver covering the work (and invoice) for which payment is being made pursuant to such check. The Parties intend that the Incubator Space and Theatre be designed, constructed, furnished and equipped free of liens and claims, and the Developer agrees to cause the same to occur and shall require the execution and delivery of any other forms necessary to assure the effective waiver of construction and other liens and claims in compliance

with the laws of the State of Florida. The Developer shall promptly deliver to the City copies of all such unconditional partial lien waivers and any other proof of payment indicating its performance and satisfaction of this Section.

5.4 **Incubator & Theatre Construction Funds Retainage**. The City will retain 10% of the amount of each Incubator & Theatre Draw Request (excluding Incubator & Theatre Draw Zero) until such time as the Developer provides the City with a certificate from the Design Architect demonstrating and certifying 50% completion of the Project, after which time the City will retain 5% of the amount of each Incubator & Theatre Draw Request. Such retainage will be released by the City to the Developer upon Substantial Completion of the Project.

5.5 **Disapproval of Incubator & Theatre Draw Request.** In the event the City disapproves any portion of an Incubator & Theatre Draw Request, then within the three (3) Business Day review period specified in Section 5.3(i) above, the City shall deliver to Developer, written notice of its disapproval, which notice shall specify in reasonable detail the reasons for the disapproval. If such written notice of disapproval is not delivered to the Developer within three (3) Business Days after the Incubator & Theatre Draw Request Submittal Date, then the Incubator & Theatre Draw Request shall be deemed approved in its entirety and the parties shall proceed with the disbursement of funds and payment of invoices as set forth in this Section 5. Developer shall have the right to amend an Incubator & Theatre Draw Request as reasonably required to address the written disapproval of the City. Regardless of whether an amended Incubator & Theatre Draw Request is received, the CFO shall make checks payable to the appropriate payees as provided in section 5.3(ii) above for those portions of each Incubator & Theatre Draw Request for which no written objection to payment has been made by the City within the time period prescribed above. With respect to the portion of the Incubator & Theatre Draw Request for which an objection is properly made, such disputed portion shall not be paid and the payment dispute shall be submitted to Dispute Resolution pursuant to Section 8 below.

5.6 Initial Incubator & Theatre Draw Request. Notwithstanding the loan closing requirement of subsection 9.1 herein, within ten (10) days of the Effective Date, the Developer may submit an initial draw request to the City in an amount not exceeding $292,638.00 for reimbursement of Incubator Space and Theatre costs incurred prior to the Effective Date ("Incubator & Theatre Draw Zero"), of which $182,986.00 will be allocated to the cost of the Incubator Space, and $109,652.00 will be allocated to the cost of the Theatre. Incubator & Theatre Draw Zero shall be in substantially the form set forth in Exhibit D, and the requirements and procedures contained in subsections 5.1, 5.3, and 5.5 (but not subsections 5.2 and 5.4) shall apply to the submittal and disbursement thereof.

6. Public Parking & Theatre Reimbursement Funds. In order to more fully fund the costs of the Public Parking Spaces and Theatre not paid for by the Parking Construction Funds and the portion of the Incubator & Theatre Construction Funds allocated to the Theatre, the CRA will provide funding to the Developer in an aggregate principal amount not to exceed $8,000,000 (the "Public Parking & Theatre Reimbursement Funds"), of which $4,000,000 will be allocated to the cost of the Public Parking Spaces, and $4,000,000 will be allocated to the cost of the Theatre. The Public Parking & Theatre Reimbursement Funds shall only be utilized by the Developer to pay for construction costs of the Public Parking Spaces and Theatre, or to repay

the principle of debt incurred to construct the Public Parking Spaces and Theatre, and no other costs shall be paid with the Public Parking & Theatre Reimbursement Funds. If the uses within the Project as set forth herein are removed or modified without the City's and CRA's prior, written consent, then the CRA, in its sole and absolute discretion, may immediately cease payment of the Public Parking & Theatre Reimbursement Funds, or any portion thereof, and upon the exercise of such discretion, the CRA's obligation to provide the Public Parking & Theatre Reimbursement Funds shall be forever terminated. The CRA shall disburse the Public Parking & Theatre Reimbursement Funds to the Developer in three (3) annual payments according to the following payment schedule (the "Annual Public Parking & Theatre Reimbursement Funds Payment"), subject to the condition that notwithstanding the schedule below, only one (1) installment payment shall be made during each CRA fiscal year (October 1 through September 30):

(i) $2,666,666.67 within thirty (30) days of the issuance of a CO for the Project, of which $1,333,333.34 will be allocated to the Public Parking Spaces and $1,333,333.33 will be allocated to the Theatre;

(ii) $2,666,666.67 one (1) year from the date of the issuance of a CO for the Project, of which $1,333,333.33 will be allocated to the Public Parking Spaces and $1,333,333.34 will be allocated to the Theatre;

(iii) $2,666,666.66 two (2) years from the date of the issuance of a CO for the Project, of which $1,333,333.33 will be allocated to the Public Parking Spaces and $1,333,333.33 will be allocated to the Theatre.

7. Classification of total Incentive Package.

7.1 **Forgivable Loan/Mortgage.** As security for the City's and CRA's investment of public funds in the Public Parking Spaces, Incubator Space and Theatre (the "Public Component"), the Parking Construction Funds, Incubator & Theatre Construction Funds, and Public Parking & Theatre Reimbursement Funds to be provided to the Developer in accordance with sections 4, 5 and 6 this Agreement, respectively (collectively, the "Total Incentive Package") shall be classified as a forgivable loan with a term beginning on the Effective Date and ending (10) years from the date of the last Annual Public Parking Spaces & Theatre Reimbursement Funds Payment set forth in section 6(iii) above. Such forgivable loan shall be evidenced by a promissory note and mortgage granted by the Developer to the City in substantially the form set forth in **Exhibit "E"** attached hereto, and incorporated herein, by reference (the "City Mortgage"). The City Mortgage shall be recorded as a lien on the Property. Provided that the Developer complies with the performance standards of the City Mortgage for a term of seven (7) years from the date of the last Annual Public Parking Spaces & Theatre Reimbursement Funds Payment set forth in section 6(iii) above, the portion of the loan associated with the Theatre shall be forgiven without any obligation for repayment, and the Theatre shall be released from the City Mortgage (as evidenced by a recorded partial release of the City Mortgage). Provided that the Developer complies with the performance standards of the City Mortgage for a term of ten (10) years from the date of the last Annual Public Parking Spaces & Theatre Reimbursement Funds Payment set forth in section 6(iii) above, the balance of the loan shall be forgiven without any obligation for repayment, and the City Mortgage shall be

released of record. Until such time as such City Mortgage is satisfied and released of record, the Developer shall not mortgage, pledge, collaterally assign, lien or otherwise encumber the Property, nor shall the Developer take any action or fail to take any action that would cause a mortgage or lien, mechanic's or otherwise, to be placed on the Property without the express, written consent of the City. Notwithstanding the foregoing, the Developer shall be entitled to pledge or mortgage its interest in the Property prior to the satisfaction of the City Mortgage for the sole purpose of securing the repayment of a loan from a lending institution licensed and authorized to do business in the state of Florida (the "Lender") relating solely to, and in an amount sufficient to complete the design and construction of the Project less the Total Incentive Package and any Developer equity (the "Construction & Permanent Loan"). The mortgage of the Lender (the "Lender Mortgage") and the City Mortgage shall be equal in priority and the City and Lender anticipate entering into an inter-creditor agreement specifying such terms as the City and Lender mutually agree with respect thereto. Notwithstanding the foregoing, nothing included in the above-referenced inter-creditor agreement will impair the City's security interest.

7.2. **Restrictive Covenant.** In addition to the City Mortgage, the Developer shall also execute and record upon the Property, a declaration of covenants and restrictions in favor of the City in substantially the form set forth in **Exhibit "F"** attached hereto, and incorporated herein, by reference (the "Declaration of Covenants & Restrictions"). The Declaration of Covenants & Restrictions shall require that the Public Component comply with the uses and conditions set forth herein for a period of twenty-five (25) years from the date of Substantial Completion of the Project (the "Public Component Use Period"), after which the Declaration of Covenants & Restrictions shall automatically terminate and be of no further force or effect. If the Developer provides the City with a legal description of the Public Component in a form reasonably acceptable to the City so that the Public Component can be legally and adequately described in the Declaration of Covenants & Restrictions; then the Declaration of Covenants & Restrictions shall be recorded upon the Public Component in lieu of being recorded on the Property.

7.3 Declaration of Condominium. If one or more components of the Project are established as a condominium form of ownership, then upon the recording of one or more declarations of condominium applicable to the Property, and upon the request of the Developer, the City shall execute and deliver to the Developer a Joinder, Consent and Subordination in a form reasonably acceptable to the City Attorney pursuant to which the City shall consent to the terms, conditions and recordation of one of more declarations of condominium, and agreeing that the lien of the City Mortgage is subordinate to the declarations.

8. Dispute Resolution. In the event that the City disapproves a Parking Construction Draw Request or Incubator & Theatre Draw Request (or any portion thereof), the following dispute resolution procedures ("Dispute Resolution") shall apply:

8.1 Upon the Developer's receipt of a notice of disapproval of a draw request (the "Dispute Notice"), the City, CRA and Developer shall meet and attempt to resolve the dispute within five (5) business days of Developer's receipt of the Dispute Notice. If the dispute cannot be resolved informally, then the Developer shall provide a written response to the Dispute Notice (the "Dispute Response") to the City, CRA and Dispute Resolution Panel. The Dispute Resolution Panel shall be a standing panel of three (3) members, with the City and CRA

selecting one member, the Developer selecting one member, and the City, CRA and Developer mutually selecting one member. Each panel member shall be an appropriately qualified neutral third party who is not a current employee, contractor or consultant of any of the parties. The Dispute Resolution Panel shall hold a hearing and issue a written decision determining whether the disapproval was proper or improper within ten (10) business days of its receipt of the Dispute Response. The decision of the Dispute Resolution Panel shall be binding on all parties. If the decision is that the disapproval was improper, then the CFO shall immediately make payment of the disputed amount. If the decision is that the disapproval was proper, then the CFO shall not be obligated to make the payment of the disputed amount until such time as a draw request for such amount that is acceptable to the City is received.

9. Performance Benchmarks. In addition to any other requirements contained in this Agreement, the City's and CRA's payment to the Developer of the Total Incentive Package, or any portion thereof, is expressly and strictly contingent upon the Developer's compliance with the following performance benchmarks (collectively, the "Performance Benchmarks:

9.1 **Loan Closing**. On or before July 1, 2009, the Developer shall close on the Construction & Permanent Loan, and shall provide the City and CRA with sufficient evidence of the closing of such loan, including a list of all post-closing conditions to funding.

9.2 **Construction Timeframe**. Developer shall meet the following deadlines with respect to the construction of the Project:

(i) Commence Construction of the Project by no later than April 1, 2010.

(ii) achieve Substantial Completion of the Project, excluding the Residential Space, by no later than April 1, 2012.

(iii) achieve Final Completion of the Project, excluding the Residential Space, within 90 days of the date of Substantial Completion; and

(iv) receive a C of C for the shell of the Residential Space by no later than April 1, 2012.

9.3 **Exterior Design Features of the Project**. The Developer must design, build, and appropriately maintain for at least ten (10) years from the date of receiving a CO for the Project, a complete package of signage, exterior lighting, architectural capital features, landscaping, and other exterior features, including, if appropriate, overhangs, balcony landscaping, and canopies, all as approved by the CRA Executive Director.

9.4 **Timely Payment of Taxes**. The Developer must pay prior to delinquency its full annual ad valorem real property tax liability as levied on the Property by all applicable taxing authorities in Orange County, Florida.

9.5 **MBE/WBE Participation**. The Developer must award at least 18% of the aggregate value of all contracts and subcontracts for supplies, materials, services, and construction work for the Project to City-certified minority-owned business enterprises

("MBEs"), and at least 6% of the aggregate value of all contracts and subcontracts for supplies, materials, services, and construction work for the Project to City-certified woman-owned business enterprises ("WBEs"). Such percentages are calculated based upon the base construction cost of the Project, including the base building, core, and shell. The Developer and its Design Architect, Design Professionals, Prime Contractor, Contractors and subcontractors may not substitute MBE and WBE firms unless good cause is demonstrated. Determination of good cause is subject to the reasonable approval or disapproval of the City. If after making a good faith effort to utilize City-certified MBEs/WBEs, the Developer is unsuccessful in fully satisfying the goals, the Developer may utilize Orange County certified MBEs/WBEs as an acceptable measure of compliance. The Developer will submit quarterly reports during the construction of the Project, in a format reasonably acceptable to the City, documenting the MBE and WBE firms used, their respective scopes of work, the dollar value of their respective contracts, a description of their respective work performed to date, and the dollar amounts paid to each to date. The Developer is hereby encouraged to exceed these minimum requirements, and the City will assist the Developer in its efforts to exceed such requirements. City representatives may visit the Property during the construction period of the Project and may interview and observe Design Architect, Design Professionals, Prime Contractor, Contractors, subcontractors, and their employees to document and oversee participation by MBE and WBE firms and other minority and women workers.

9.6 **Living Wage**. During construction of the Project, the Developer will pay to all of its employees, Prime Contractor, Contractors, and first tier subcontractors providing Project-related construction services, a living wage for all time spent providing such services. This provision does not apply to general administrative personnel. For the purpose of this subsection, the term "living wage" means compensation for employment of not less than $8.50 per hour for straight time, exclusive of FICA, unemployment taxes, and workers compensation insurance and employee benefits. Necessary payroll documentation will be provided to confirm compliance with this provision, or the Developer must allow the City to inspect (at the Developer's regular place of business) the Developer's payroll records in order to determine whether the Developer has complied with the requirements of this subsection.

9.7 **Theatre Use for City Events.** The Developer shall make available, or caused to be made available, the Theater to the City for City sponsored or supported events twelve (12) times per year for a period of ten (10) years from the date of Substantial Completion of the Theatre. At least thirty (30) days prior to the event, the City shall deliver a written request to the Developer specifying the date, time and duration of each event, and within five (5) business days of its receipt of such request, the Developer shall provide the City with written confirmation that the Theatre is available for such event. The Developer shall provide the City with a schedule of events at the Theatre on a quarterly basis, and provide the City with any changes to such schedule as such changes are made. If the Theatre is not available on the date requested by the City due to a previously scheduled event shown on the schedule, as amended, then the City event shall not be held at the Theatre on such date. If the Theatre is not available on the date requested by the City due to a previously scheduled event not shown on the schedule, as amended, then the City event shall be held at the Theatre on such date unless otherwise agreed to by the City and Developer.

9.8 **CRA Office Space.** The Developer shall provide the CRA with 500 square feet of the Office Space in Vanilla Box condition for the CRA's use for a period of ten (10) years from the date of Substantial Completion of the Project at a rate of one dollar ($1) per year (the "CRA Office Space"). In all other respects other than rent, including, but not limited to, maintenance and utilities, the CRA shall be treated as a typical Incubator Space tenant with respect to the CRA Office Space.

9.9 **Employment Opportunities.** The Developer shall provide residents within the Downtown Redevelopment Area with employment opportunities within the Parking Structure, Retail Space and Carver Theatre.

10. Books and Records/Right to Audit. The Developer will maintain and keep, or will cause to be maintained and kept, full and accurate books and records, and any other accounting or financial documents or records, invoices, general ledgers, accounts receivable records, accounts payable records, payroll records, receipts, or other materials as is reasonably necessary to audit, track, and verify the Developer's compliance with this Agreement, including, but not limited to, Developer's use of the Total Incentive Package, including all draw requests made by Developer, and the use, operation, revenue and expenses of the Parking Structure, including the Public Parking Spaces, and the operation and use of the Public Parking Spaces, Incubator Space and Theatre, pursuant to this Agreement. Developer shall retain and maintain or cause such books and records to be retained and maintained for at least five (5) years after the termination date of this Agreement or until all then outstanding audits are closed, whichever is later. For the term of this Agreement, and for five (5) years after the termination date of this Agreement, City, and any third party auditor designated by either of them shall have the right to independently examine, audit, inspect, and transcribe the books and records of Developer or other relevant third party as described in this part. Developer shall make or cause to be made available such books and records for the aforesaid purpose. City agrees that any auditor that it designates to act pursuant to this part shall either be knowledgeable in auditing such books and records or shall joint venture the engagement with another auditor having such knowledge and experience. Any books and records required to be disclosed to City pursuant to this part shall be subject to reasonable confidentiality restrictions not inconsistent with law, and shall be available for review during normal business hours on reasonable notice at the offices of Developer and may not be removed without the consent of Developer, which consent will not be unreasonably withheld. Such review shall be conducted in such a manner as to minimize, to the extent practicable, disruption and inconvenience to Developer and its staff. Internal control standards and records required thereby shall be made available for review to the auditor. The reasonable costs and expenses incurred by each party under this part shall be borne by each respective party. The rights granted to City under this part are in addition to and not in limitation of any other inspection or audit rights that City may have under law.

11. Indemnification and Insurance.

11.1 **Indemnification.** The Developer will defend, indemnify, and hold harmless the City and CRA and each of their officers, directors, agents, and employees, whether elected, appointed, or otherwise (collectively referred to as the "Indemnitees" and individually as the "Indemnitee") from and against any and all liabilities, losses, damages, costs, expenses, claims,

obligations, penalties and causes of action (including without limitation, reasonable fees and expenses for attorneys, paralegals, expert witnesses and other consultants at the prevailing marker rate for such services) whether based upon negligence, strict liability, absolute liability, product liability, misrepresentation, contract, implied or express warranty or any other principle or theory of law or equity, that are imposed upon, incurred by, or asserted against Indemnitees or which Indemnitees may suffer or be required to pay and which arise out of or relate in any manner from Developer's performance of or failure to perform any of its obligations or duties under this Agreement, including without limitation any and all claims arising out of or resulting in any way from Developer's construction, operation, and maintenance of the Project, and which are caused in whole or in part by the Developer, or any of its agents, employees, officers, directors, contractors, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, other than claims resulting from the negligent acts or omissions or willful misconduct of the City or CRA, or any of their respective elected or appointed officials, employees, agents or representatives.

11.2 **Insurance.** The Developer shall acquire and maintain the insurance coverage and comply with the requirements as set forth in **Exhibit "G"** attached hereto and incorporated herein, by reference.

12. Covenants and Representations of the Developer. The Developer hereby covenants, warrants, represents, acknowledges, and accepts the following statements which the City and the CRA have and will continue to rely upon in exchange for providing the Total Incentive Package to the Developer:

12.1 **Ownership of the Property**. The Developer is the fee simple owner of the Property and will maintain fee simple ownership of the Property for at least 10 years from the date of receiving a CO for the Project.

12.2 **Payment of Taxes**. All ad valorem real property taxes assessed upon the Property through year 2007 have been paid in full.

12.3 **Taxable Value of the Property**. The Developer will not intentionally take any action or omit to take any action which would cause the taxable value of the Property to materially diminish, except that the Developer may petition the Orange County Value Adjustment Board as provided by law, or otherwise challenge the property appraiser's valuation of the Property. The Developer will provide written notice to the City by August 15 of each year if it intends to petition the Orange County Value Adjustment Board in relation to the Property.

12.4 **Public Art at the Project**. The Developer shall incorporate public artwork within the Property. The artwork and its location on the Property is subject to review and approval by the Executive Director of the CRA, and must be worth at least $25,000 at the time of installation. The artwork must be maintained on the Property in accordance with Executive Director's approval for at least 10 years after its initial installation. This requirement may be satisfied through the incorporation of design elements into the building reasonably acceptable to the CRA's Executive Director.

13. **Option to Purchase**. The Developer hereby grants to the City and CRA an option to purchase the Property (the "Option"), which may be exercised by the City or CRA only if the Developer is in default of the Lender Mortgage or other security instrument held by the Lender to secure the repayment of the Construction & Permanent Loan, and the Developer has failed to cure such default within the applicable cure period set forth in the Construction & Permanent Loan documents. The exercise price for such Option shall be $1.00. The Developer shall notify the City and CRA in writing of the Developer's default of the Construction & Permanent Loan within five (5) days of its receipt of notice of such default from the Lender, and shall further notify the City and CRA in writing whether the Developer has cured the default or failed to cure the default within the applicable cure period. The City or CRA shall exercise the Option by delivering written notice to the Developer of its exercise of the Option based on the conditions set forth herein having been met. Closing of the conveyance contemplated herein shall occur at a date, time and place mutually agreeable to the parties on or before ninety (90) days following the exercise of the Option. The purchase price of the Property shall be the fair market value of the Property as determined by an independent appraiser mutually selected by the parties less the amount of the Total Incentive Package provided to the Developer, it being the intent of the parties that the City and CRA shall receive a credit toward the purchase price in an amount equal to the Total Incentive Package provided to the Developer hereunder. The Developer shall convey the Property to the City or CRA, as applicable, "As Is" without warranty or representation of any kind, subject only to permitted exceptions mutually agreed to the parties and any additional matters of record.

14. **No Personal Liability**. No provision of this Agreement is intended, nor shall any be construed, as a covenant, promise, or obligation of any official, officer, director, agent, or employee, whether elected, appointed, or otherwise, of City, CRA, or Developer, in their respective individual or private capacity and neither shall any such persons or entities be subject to personal or private liability by reason of any covenant, promise, or obligation of the City, CRA, or Developer hereunder.

15. **Annual Status Reports**. Beginning in calendar year 2009, and continuing for the term of this Agreement, the Developer will submit to the CRA Executive Director and CFO an annual status report evidencing and certifying compliance with each of the terms and conditions of this Agreement. Each annual status report shall cover the calendar year period January 1 through December 31, and must be delivered no later than 90 days after the end of the calendar year. Each annual report must be in a form reasonably acceptable to the CRA Executive Director and CFO. Additionally, either party may request an occasional status meeting to discuss concerns or issues arising from the operation of this Agreement. The parties will each use their best efforts to participate meaningfully in such meetings, but nothing in this section should be construed to require either party to call such status meetings as a condition precedent to the termination of this Agreement in accordance with section 35 hereinafter.

16. **Performance and Payment Bonds**. The Developer will require that the Contractor provide a performance bond and a labor and material payment bond each in an amount not less than the aggregate construction cost of the Project (base buildings, core, and shell), less amounts covered by subcontractors bonds provided that 100% of the construction cost of the Project is bonded in aggregate. To be acceptable for as surety for performance bond and labor and material bonds, a surety must comply with the following minimum requirements:

16.1 The surety must have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds on the State of Florida.

16.2 The surety must be named in the most current listing of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the U.S. Department of the Treasury.

16.3 The surety must be in full compliance with the provisions of the Florida Insurance Code.

16.4 The surety must have at least an "A-" financial strength rating in accordance with the most current A.M. Best Company ratings.

16.5 If the surety on any bond furnished by the contractor is declared bankrupt or becomes insolvent or if its assets are acquired by regulatory agencies or if liquidation proceedings begin or its license to do business in the state is terminated or it ceases to meet the requirements

17. Delivery of Notices. Any notice, demand, or other communication which any party may desire or may be required to give to any other party shall be in writing delivered by any one or more of the following methods, (i) hand delivery, (ii) a nationally recognized overnight courier, (iii) telecopy or facsimile, or (iv) United States Postal Service mail, first class, postage prepaid, or by United States Postal Service certified or registered mail with return receipt requested, to the following addresses, or to such other address as the party to receive such communication may have designated to all other parties by notice in accordance herewith:

If to City:
Chief Financial Officer
City of Orlando
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801
Telephone: (407) 246-2341
Facsimile: (407) 246-2707

with copy to:
Director, Economic Development Department
City of Orlando
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801
Telephone: (407) 246-
Facsimile: (407) 246-

And a copy to:

City Attorney
City of Orlando
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801
Telephone: (407) 246-2295
Facsimile: (407) 246-2854

If to CRA:

Executive Director
Community Redevelopment Agency
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801
Telephone: (407) 246-3361
Facsimile: (407) 246-2848

With copy to:

Chief Financial Officer
City of Orlando
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801
Telephone: (407) 246-2341
Facsimile: (407) 246-2707

If to Developer:

Inez Long
Carver Theatre Developers, LLC
315 E. Robinson St., Suite 660
Orlando, Florida 32801
Telephone: (407) 649-4780
Facsimile: (407) 649-8688

And a Copy to:

Veronica Anderson, Esquire
Anderson & Associates, P.A.
805 S. Kirkman Road, Suite 204
Orlando, Florida 32811
Telephone: (407) 843-9901
Facsimile: (407) 843-9903

Any such notice, demand, or communication shall be deemed delivered and effective upon the earlier to occur of actual delivery or, if delivered by telecopy or facsimile, the same day as confirmed by telecopy or facsimile transmission.

18. **Assignment**. Developer may not assign this Agreement, or any portion thereof, without the prior, written consent of City and CRA.

19. **Third Parties**. Except as explicitly provided for herein, there are no third party beneficiaries with respect to this Agreement, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

20. **Delegation**. Except as explicitly provided for herein, any provision that permits or requires a party to take action shall be deemed to permit or require, as the case may be, the party to cause the action to be taken.

21. **Remedies**. Nothing in this Agreement shall be construed to limit any party's remedies in equity or law.

22. **Governing Law and Venue**. This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any action or proceeding relating to the validity, performance, and enforcement of this Agreement, whether in law or equity, shall be brought and heard in Orange County, Florida. City, CRA, and Developer hereby submit to the jurisdiction of the courts within Orange County, Florida, whether federal or state, for the purposes of any suit, action, or other proceeding, arising out of or relating to this Agreement, and hereby agree not to assert by way of motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper.

23. **Interpretation**. In the event any provision of this Agreement is capable of more than one reasonable interpretation, one which render the provision invalid and one that would render the provision valid, the provision shall be interpreted so as to render it valid.

24. **Time is of the Essence**. All times, wherever specified or anticipated herein for the performance of some obligation hereunder, are of the essence of this Agreement, except that where any party's performance is made impracticable without its fault by the occurrence of force majeure the non-occurrence of which was a basic assumption on which this Agreement is made, its duty to render such performance is discharged until such time that reasonable effort and prudence would make such performance practicable. For the purpose of this part, force majeure means any act of God, act of people, or other event that can be neither anticipated nor controlled, including without limitation, hurricanes, tornadoes, tropical storms, tropical depressions, earthquakes, floods, lightning, severe water damage, severe weather events, chemical, biological, or nuclear catastrophes, meteorological events or impacts, significant accidents to or failure of essential equipment or machinery, fire, riot, labor controversy, civil unrest, civil commotion, terrorist activity or attack, acts of war, acts of an enemy, or other major upheaval, the effects of which could not have been prevented or avoided by the exercise of due care and foresight.

25. **Further Assurances**. City, CRA, and Developer will cooperate and work together in good faith to the extent reasonably necessary to accomplish the mutual intent of the parties as expressed and anticipated herein.

26. **Entire Agreement**. This Agreement, and all the documents and agreements described or referred to herein, including without limitation the exhibits hereto, constitute the entire, full, and complete agreement by and between City, CRA, and Developer, with respect to the subject matter hereof, and supersedes and controls in its entirety over any and all prior

agreements, understandings, representations, and statements, whether written or oral by any of the parties hereto.

27. **Captions and Headings**. Captions and headings in this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement nor shall in any way affect this Agreement or the interpretation or construction thereof.

28. **Exhibits**. Each and every exhibit referred to herein and attached hereto is an essential part of this Agreement and is hereby incorporated into this Agreement.

29. **No Joint Venture or Agency**. Nothing contained in this Agreement or any other document executed in connection herewith is intended or shall be construed to establish Developer as a joint adventurer or partner of City or CRA. Developer represents and warrants that it cannot create any obligation or responsibility on behalf of City or CRA, nor bind City or CRA in any manner. Each party hereto is acting on its own behalf, and has made its own independent decision to enter into this Agreement, and have likewise determined that the same is appropriate, proper, and in its own self-interest based upon its own judgment and the advice from such advisers as it may deem necessary and proper. Additionally, City and CRA on the one hand, and Developer on the other, along with their respective agents, contractors, and subcontractors, shall perform all activities that are required and anticipated by this Agreement as independent entities and not as agents of each other.

30. **Non-Waiver of Regulatory Authority**. Notwithstanding anything herein to the contrary, Developer acknowledges that nothing set forth in this agreement shall serve as a waiver, impairment or compromise of the City's regulatory authority in the review, approval, permitting or inspection of the construction or development of the Project on the Property, and the City shall not be responsible for damages, delays or cost overruns resulting from the proper exercise of its regulatory authority.

31. **Invalidity/Severability**. If any sentence, phrase, paragraph, provision, portion, or part of this Agreement is for any reason held illegal or invalid by a court of competent jurisdiction, and which part shall not appear to have been a controlling or material inducement to the making hereof, such part shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the full force and binding affect of the remainder, but only to the extent that the remainder does not become unreasonable, absurd, or otherwise contrary to the purpose and intent of this Agreement. If the payment of the Total Incentive Package, or portion thereof, in the manner set forth in this Agreement is determined to be invalid or contrary to Florida law, the City and CRA shall not be obligated to pay to the Developer the portion of such Total Incentive Package determined to be invalid to the Developer, and the Developer agrees that neither the City nor CRA shall be liable for such payment.

32. **Default Notice**. City, CRA, and Developer will immediately notify each other in the event of any known, discovered, or anticipated default hereunder.

33. **Non-action or Failure to Observe Provisions**. The failure of any party hereto to promptly insist upon strict performance of any term, covenant, condition, or provision of this

Agreement, or any other agreement, understanding, license, or arrangement contemplated hereby, shall not be deemed a waiver of any right or remedy that any party hereto may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition, or provision.

34. **Effective Date and Term.** This Agreement is effective as of the date first handwritten above (the "Effective Date") and shall expire, subject to termination, severability, and survival provisions, upon full satisfaction of all obligations of the parties contained herein.

35. **Modification.** Modification of this Agreement may only be made by written agreement of the parties hereto.

36. **Breach and Remedies.**

36.1 **Developer's Breach/City & CRA Remedies.** The Developer shall be in breach of this Agreement if it (a) defaults under the Construction and Permanent Loan, and fails to cure such default within the applicable cure period in the Construction and Permanent Loan documents, or (b) fails to comply at all times with its obligations contained herein, including, but not limited to, the Performance Benchmarks in section 9 and the Covenants and Representations of Developer in section 12. Upon such breach, the City and CRA may suspend the payment of any incentive provided for herein until such breach is cured to the reasonable satisfaction of the City and CRA. The City or CRA shall provide written notice of such breach to the Developer ("Notice of Breach"), and the Developer's failure to cure such breach within sixty (60) calendar days from the date of its receipt of the Notice of Breach may result in the immediate termination of this Agreement and the incentives provided for herein, provided, however, that if the nature of the breach is such that it cannot reasonably be cured within such 60 day period, then the Developer shall have up to an additional sixty (60) days (as determined in the City's reasonable discretion) to cure such breach provided that it diligently undertakes and pursues such cure, and further provided that the Developer provides the City with documentation evidencing that it is diligently undertaking and pursuing such cure to the City's reasonable satisfaction, but in any event, the Developer shall not have more than one hundred twenty (120) days from its receipt of the Notice of Breach to cure such breach, except in the case of the Developer's default under the Construction Loan, in which case the Developer shall be afforded the cure period provided for in the Construction Loan documents. The failure to cure such breach within the time period provided for above may result in the immediate termination of this Agreement. In the event of such termination, all incentive payments contemplated hereunder shall immediately cease and the obligation to provide such incentives shall be forever discharged, and the Developer shall reimburse the City and CRA the full amount of any incentives provided to the Developer as of the date of termination. In addition, the City may accelerate the note and mortgage, thereby requiring the mandatory prepayment in full of an amount not less than the outstanding principal amount of the Total Incentive Package provided by the City to the Developer as of the date of termination, plus accrued interest and administrative costs. Additionally, the City shall have the right to require the Developer's specific performance under the terms and conditions of this Agreement and to enforce the Declaration of Covenants & Restrictions, or pursue any other remedy available at law or in equity.

36.2 **City/CRA Breach/Developer's Remedies**. In the event that the City or CRA materially breaches any of their respective obligations contained herein, including, but not limited to the obligation to provide the Total incentive Package, or any portion thereof, and fails to cure such breach within thirty (30) calendar days from the date of its receipt of written notice of such breach from the Owner, then the Developer's sole remedy is to require the City's or CRA's specific performance under the terms and conditions of this Agreement. If the Developer prevails in any legal proceeding requiring the City or CRA to pay an economic development incentive provided for herein, then the City or CRA, as appropriate, shall pay interest on the amount due at the rate of 200 b.p. over 30 day LIBOR. The Developer shall not be entitled, and expressly waives the right, to recover from the City and CRA any special, incidential, consequential or punitive damages in connection with this Agreement or any rights granted hereunder.

37. **Authority to Execute and Comply**. City, CRA, and Developer each represent and warrant that their respective signatories hereunder have been duly and lawfully authorized by the appropriate body or official(s) to execute this Agreement. Additionally, City, CRA, and Developer each represent and warrant that they have respectively complied with all applicable requirements and preconditions of law necessary to enter into and be bound by this Agreement, and that they have full power and authority to comply with the terms and provisions of this Agreement.

38. Computation of Time. In computing any period of time prescribed or allowed under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

39. **Counterparts; Copies**. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument. True and accurate telecopies, photocopies, facsimiles, or other mechanical reproductions shall have the same force and effect as a validly executed original, and, in lieu of a validly executed original, any party hereto may use such reproduction of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.

40. **No City/CRA Security**. The Developer shall not pledge any of the City's or CRA's credit nor make any of them a guarantor of payment or surety for any contract, debt, note, obligation, judgment, lien, or any form of indebtedness. This Agreement shall be construed in such a manner that in no event shall the City or CRA be required to provide security for repayment of any outstanding loans to the Developer with respect to the Property nor shall the City or CRA be obligated under any mortgage or promissory note as the same relate to the Property.

41. **Waiver.** No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(ies) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The rights of the parties under this Agreement shall be cumulative and the failure to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

42. **Memorandum of Agreement.** The City, CRA and Developer shall record in the public records of Orange County, Florida, a memorandum of this Incentive Agreement in substantially the form attached hereto as **Exhibit "H".**

*[Remainder of page intentionally left blank.]**

Signatures begin on Following Page

IN WITNESS WHEREOF, City, CRA, and Developer have duly and lawfully approved and executed this Economic Development Incentive Agreement For Carver Theatre as of the date first handwritten hereinabove.

CITY OF ORLANDO, FLORIDA,

By: _____
Mayor / Mayor Pro Tem

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

_____
Assistant City Attorney

CITY OF ORLANDO, FLORIDA,
COMMUNITY REDEVELOPMENT AGENCY:

By: _____
Chairman

ATTEST:

By: _____
Executive Director

*[Remainder of page intentionally left blank.]**

Signatures continued on Following Page

CARVER THEATRE DEVELOPERS, LLC,
a Florida limited liability company:

By: Inez Long

Name: Inez Long

Title: Manager

STATE OF FLORIDA }
COUNTY OF ORANGE }

PERSONALLY APPEARED before me, the undersigned authority, Inez Long, [✓] well known to me, or [ ] who has produced his/her _____ as identification, and known to me to be the Manager of Carver Theatre Developers, LLC, and acknowledged before me that he/she executed the foregoing instrument on behalf of Carver Theatre Developers, LLC, as its true act and deed, and that he/she was duly authorized to do so.

Witness my hand, and official seal this 16th day of October, 2008.

CYNTHIA E. SANFORD
Comm# DD0714196
Expires 9/22/2011
Florida Notary Assn., Inc

Notary Public

My Commission expires:

EXHIBIT A
Property Legal Description

LOT 2, BLOCK A, PARRAMORE HERITAGE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 62, PAGE 46 AND 47, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA

EXHIBIT B
PRIME CONTRACTOR INSURANCE

1. Commercial General Liability Insurance

   personal injury coverage shall be for not less than $2,000,000 for each occurrence and not less than $4,000,000 annual aggregate.

   Property damage coverage shall be for not less than $1,000,000 each occurrence and $2,000,000 annual aggregate.

   or

   personal injury and property damage coverage in a combined single limit of not less than $3,000,000 each occurrence and $5,000,000 annual aggregate.

2. Business Automobile Liability

   Bodily injury coverage shall be for not less than $2,000,000 for each person and not less than $2,000,000 for each accident, per each occurrence.

   Property damage coverage shall be for not less than $500,000 for each occurrence.

   or

   Bodily injury and property damage coverage in a combined single limit of not less than $3,000,000 for each occurrence and $5,000,000 annual aggregate.

3. Worker's Compensation.

   Worker's Compensation in accordance with Florida statute, Chapter 440

4. Employer's Liability Insurance.

   Employer's Liability Insurance with limits not less than $1,000,000 per occurrence.

5. Builder's Risk Insurance.

   Policy limit in an amount no less than the total value of the Work performed, materials, equipment, machinery and supplies furnished, existing structures, and temporary structures being erected on or near the Project site.

EXHIBIT C
PARKING CONSTRUCTION DRAW REQUEST

CARVER THEATRE

DRAW REQUEST # _____

Date: _____

TO: **City of Orlando, Florida**
Attn: Chief Financial Officer
City Hall, 4th Floor
400 South Orange Avenue
Orlando, FL 32801

FROM: **Inez Long, Manager**
Carver Theatre Developers, LLC

SUBJECT: **Economic Development Incentive Agreement dated ___ / ___ / 2008 (the "Incentive Agreement")**
Draw Request # ___ on $6,335,000 Parking Construction Funds related to the Carver Theatre Redevelopment Project.

Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in the Incentive Agreement.

Carver Theatre Developers, LLC hereby requests a draw of $_____ against the Six Million Dollars ($6,335,000) in Parking Construction Funds to be funded by the City of Orlando pursuant to the Incentive Agreement.

Disbursement under this draw request together with the total amount of all previous disbursements brings the cumulative amount drawn to $_____.

To support this draw request, we have attached the following documentation required by Section 4.1 of the Incentive Agreement:

(i) a copy of the application for payment from each payee for whom payment is being requested and a statement setting forth (A) the name, address and federal taxpayer identification number of each payee, (B) the amounts to be paid, (C) a description of the work provided by each payee, and (D) invoices and other supporting documentation reasonably acceptable to the CFO.

(ii) to the extent applicable, a conditional partial waiver of lien from each payee covering all work performed by such payee since the last payment application of such payee. The final Parking Construction Draw Request shall include a final waiver of lien from each payee.

(iii) the most recent schedules of values, if applicable, which schedules of values shall allocate the applicable GMP or fixed contract sum among the various portions of the work relating to the Project, including the Parking Structure, and shall identify the percentage of that portion of the Work that has actually been completed.

The City is hereby requested to (check applicable request) :

_____ issue a check made payable to Carver Theatre Developers, LLC for the amount

requested for pick-up/mail by/to _____

_____ ;

Or

_____ wire the amount requested to the Carver Theatre Developers, LLC bank account

#_____ at _____

_____.

I hereby certify that this draw request meets with all the terms and conditions of the Incentive Agreement and that all such funds received from the City will be used exclusively for construction costs of the Parking Structure.

By:_____
Inez Long, Manager
Carver Theatre Developers, LLC

City of Orlando, Florida:

Disbursement Amount Approved: $_____

By:_____
Rebecca Sutton
Chief Finanical Officer

Date Approved: _____, 20___.

EXHIBIT D
INCUBATOR & THEATRE DRAW REQUEST

CARVER THEATRE

DRAW REQUEST # _____

Date: _____

TO: **City of Orlando, Florida**
Attn: Chief Financial Officer
City Hall, 4th Floor
400 South Orange Avenue
Orlando, FL 32801

FROM: **Inez Long, Manager**
Carver Theatre Developers, LLC

SUBJECT: **Economic Development Incentive Agreement dated ___ / ___ / 2008 (the "Incentive Agreement")**
Draw Request # ___ on $3,165,000 Incubator & Theatre Construction Funds related to the Carver Theatre Redevelopment Project.

Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in the Incentive Agreement.

Carver Theatre Developers, LLC hereby requests a draw of $_____ against the Three Million Dollars ($3,165,000) in Incubator & Theatre Construction Funds to be funded by the City of Orlando Community Redevelopment Agency (the "CRA") pursuant to the Incentive Agreement. From the amount requested, $_____ is drawn against the $1,979,145 allocated to the Incubator Space, and $_____ is drawn against the $1,185,855 allocated to the Theatre.

Disbursement under this draw request together with the total amount of all previous disbursements brings the cumulative amount drawn against the Incubator Space allocation to $_____, and the cumulative amount drawn against the Theatre allocation to $_____. Therefore, the total cumulative amount drawn against the $3,165,000 is $_____.

To support this draw request, we have attached the following documentation required by Section 5.1 of the Incentive Agreement:

(i) a copy of the application for payment from each payee for whom payment is being requested and a statement setting forth (A) the name, address and federal taxpayer identification number of each payee, (B) the amounts to be paid, (C) a description of the work provided by each payee, and (D) invoices and other supporting documentation reasonably acceptable to the CFO.

(ii) to the extent applicable, a conditional partial waiver of lien from each payee covering all work performed by such payee since the last payment application of such payee. The Incubator & Theatre Construction Draw Request shall include a final waiver of lien from each payee.

(iii) the most recent schedules of values, if applicable, which schedules of values shall allocate the applicable GMP or fixed contract sum among the various portions of the work relating to the Project, including the Incubator and Theatre, and shall identify the percentage of that portion of the work that has actually been completed.

The City is hereby requested to (check applicable request):

_____ issue a check made payable to Carver Theatre Developers, LLC for the amount requested for pick-up/mail by/to _____

_____;

Or

_____ wire the amount requested to the Carver Theatre Developers, LLC bank account #_____ at _____

_____.

I hereby certify that this draw request meets with all the terms and conditions of the Incentive Agreement and that all such funds received from the City will be used exclusively for construction costs of the Incubator Space and Theatre.

By: _____
Inez Long, Manager
Carver Theatre Developers, LLC

City of Orlando, Florida:
Disbursement Amount Approved: $_____

By: _____
Rebecca Sutton
Chief Financial Officer

Approved on _____, 20___.

By: _____
Thomas Chatmon
CRA Executive Director

Approved on _____, 20___.

EXHIBIT E
NOTE AND MORTGAGE
(see attached)

PROMISSORY NOTE

FOR VALUE RECEIVED, on this _____ day of _____, 2008, the undersigned Carver Theater Developers, LLC (herein collectively the "Developer") promises to pay to the order of the City of Orlando, a municipal corporation of the State of Florida, herein referred to as the "City", or its successors (hereinafter "City"), the principal sum of Seventeen Million and No/100 Dollars ($17,500,000.00) payable in lawful money of the United States of America, of which $10,335,000 shall be allocated to the Public Parking Spaces (Public Parking Funds), $5,185,855 shall be allocated to the Theatre (Theatre Funds), and $1,979,145 shall be allocated to the Incubator Space (Incubator Funds). All payments shall be made at 400 S. Orange Avenue, Orlando, Florida, or at such place as may hereafter be designated by written notice from the City to the Developer, on the dates and in the manner following:

The purpose of this note is to evidence the funds which have been provided to Developer for the Project described in the Economic Development Incentive Agreement of even date herewith ("Agreement") for the redevelopment of the property encumbered by the Mortgage securing this note. Should Developer abide by all of the terms and conditions of the Loan Documents (as herein defined) during the period beginning on the Effective Date of the Agreement and ending on the date seven (7) years from the date of the final Annual Public Parking & Theatre Reimbursement Funds Payment set forth in section 6 of the Agreement, the Theatre Funds shall convert to a grant in the form of the forgiveness of the Theatre Funds debt without any obligation for repayment. Should Developer abide by all of the terms and conditions of the Loan Documents (as herein defined) during the period beginning on the Effective Date of the Agreement and ending on the date ten (10) years from the date of the final Annual Public Parking & Theatre Reimbursement Funds Payment set forth in section 6 of the Agreement (the "Term"), the Public Parking Funds and Incubator Funds portions of the loan will convert to a grant in the form of the forgiveness of the Public Parking Funds and Incubator Funds debt without any obligation for repayment. So long as there is no default in this note or any of the Loan Documents, all payments of principal are deferred for the entire Term. This loan will bear interest at the rate of five percent (5%) percent per annum.

This note is not assumable.

Documentary Stamps. Florida Documentary stamp tax as required by Chapter 201 of the Florida Statutes in the amount required by Florida law has been paid as notated in the Mortgage and Security Agreement ("Mortgage") securing repayment of this loan and any recorded notices of future advances under the Mortgage.

At the option of the Holder of this Note, the Note shall become immediately due and payable, without notice or demand, upon the occurrence of any Event of Default, as provided in the Loan Documents. For purposes of this Note, "Loan Documents" shall include this Note, the Mortgage, the Agreement and all other documents specifically referenced in either the Mortgage or the Agreement, and any other document whose subject is the property secured by the Mortgage or the Project for which funds are to be advanced as evidenced by this Note.

The Developer or endorser hereby waives presentment, protest, notice, notice of protest, notice of dishonor and agrees to pay all costs, excluding attorneys fees, incurred in the collection of this note.

Security. This Note is collateralized by, among other things, the Mortgage given by Developer to City of even date herewith upon real property (the "Property") in Orange County, Florida. The terms and all conditions of the Loan Documents are incorporated by reference the same as if set out herein in full.

Usury Limitation. The parties agree and intend to comply with the applicable usury law, and notwithstanding anything contained herein or in any of the Loan Documents, or other documents related to the loan evidenced by this Note, the effective rate of interest to be paid on this Note (including all costs, charges and fees which are characterized as interest under applicable law) shall not exceed the maximum contract rate of interest permitted under applicable law, as it exists from time to time. City agrees not to knowingly collect or charge interest (whether denominated as fees, interest or other charges) which will render the interest rate hereunder usurious, and if any payment of interest or fees by Developer to City would render this Note usurious, Developer agrees to give City written notice of such fact with or in advance of such payment. If City should receive any payment which constitutes interest under applicable law in excess of the maximum lawful contract rate permitted under applicable law (whether denominated as interest, fees or other charges), the amount of interest received in excess of the maximum lawful rate shall automatically be applied to reduce the principal balance, regardless of how such sum is characterized or recorded by the parties.

Waiver and Consent. By the making, signing, endorsement or guaranty of this Note:

(a) Developer and each co-signor, endorser, surety or guarantor waive protest, presentment for payment, notice of dishonor, notice of intent to accelerate and notice of acceleration;

(b) Each co-signor, endorser, surety or guarantor consents to any renewals or extensions of time for payment on this Note;

(c) Developer and each co-signor, endorser, surety or guarantor consents to City's release of any co-signor, endorser, surety or guarantor;

(d) Developer and each co-signor, endorser, surety or guarantor waive and consent to the release, substitution or impairment of any collateral securing this Note;

(e) Each co-signor, endorser, surety or guarantor consents to any modification of the terms of this note or any other Loan Document;

(f) Developer and each co-signor, endorser, surety or guarantor consent to any and all sales, repurchases and participations of this Note to or by any person or entity in any amounts and waive notice of such sales, repurchases and participations of this Note;

(g) Developer and each co-signor, endorser, surety or guarantor consent to City's right of set-off as well as any participating bank's right of set-off; and

(h) Developer and each co-signor, endorser, surety or guarantor promise to pay all collection costs, excluding reasonable attorneys' fees, whether incurred in connection with collection, trial, appeal or otherwise.

Events of Default. Developer shall be in default in this Note upon the occurrence of any of the following events, circumstances or conditions (each an "Event of Default"):

(a) Developer's failure to make any payment of any sum due hereunder within ten (10) days of the due date thereof, without further notice or demand, or to make any other payment due from the Developer to the City under any other Loan Document or other written obligation of any kind now existing or hereafter created.

(b) The existence of a default or breach of any of the terms of this Note or any other Loan Document that is not cured within any applicable grace and/or cure period.

(c) Developer's continued failure to perform any other obligation imposed upon Developer by the Mortgage, for a period of (10) days after written demand; provided (i) if Developer reasonably cannot perform within such ten (10) day period, and in City's reasonable judgment, City's security will not be impaired, Developer may have such additional time to perform as Developer reasonably may require, provided and for so long as Developer proceeds with due diligence to cure said default; and (ii) if City's security reasonably will be materially impaired if Developer does not perform in less than ten (10) days, Developer will have only such period following written demand in which to perform as City reasonably may specify.

(d) Any verbal or written representation, statement or warranty of Developer any co-signor, endorser, surety or guarantor of the Note, contained in the Note, the Mortgage or any other Loan Document, or in any certificate delivered pursuant hereto, or in any other instrument or statement made or furnished in connection herewith, proves to be incorrect or misleading in any material respect as of the time when the same shall have been made, including, without limitation, any and all financial statements furnished by Developer to City as an inducement to City's making the loan evidenced by the Note or pursuant to any provision of the Mortgage.

(e) The dissolution of Developer.

Remedies after Default. At the option of City, all or any part of the principal and accrued interest on this Note, and all other obligations of the Developer to the City shall become immediately due and payable without additional notice or demand, upon the occurrence of an Event of Default or at any time thereafter. City may exercise all rights and remedies provided by law, equity, this Note or any other Loan Document or any other obligation of the Developer to the City. All rights and remedies as set forth in the Loan

Documents are cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of City, and may be exercised as often as occasion therefore shall arise. Such remedies are not exclusive, and City is entitled to all remedies provided at law or equity, whether or not expressly set forth therein. No act, omission, commission or waiver of City, including specifically any failure to exercise any right, remedy or recourse shall be effective unless set forth in a written document executed by City and then only to the extent specifically recited therein. A waiver or release with reference to one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to any subsequent event.

Time of the Essence. Time is of the essence with respect to each provision in this Note where a time or date for performance is stated. All time periods or dates for performance stated in this Note are material provisions of this Note.

Captions and Pronouns. The captions and headings of the various sections of this Note are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

Severability. If any provision of this Note shall be held unenforceable or void, then such provision shall be deemed severable from the remaining provisions and shall in no way affect the enforceability of the remaining provisions nor the validity of this Note.

Disclaimer of Relationship. The Developer and all co-signors, endorsers, sureties and guarantors, if any, to this obligation acknowledge that:

(a) The relationship between the City, Developer and any co-signor, endorser, surety or guarantor is one of creditor and debtor and not one of partner or joint venturer;

(b) There exists no confidential or fiduciary relationship between City and Developer and any co-signor, endorser, surety or guarantor imposing a duty of disclosure upon the City; and

(c) The Developer and any co-signor, endorser, surety or guarantor has not relied on any representation of the City regarding the merits of the use of funds provided. Developer and any co-signor, endorser, surety or guarantor waive any and all claims and causes of action which exist now or may exist in the future arising out of any breach or alleged breach of a duty on the part of the City to disclose any facts material to this transaction and the use of the proceeds.

WAIVER OF TRIAL BY JURY. THE DEVELOPER HEREBY, AND THE CITY BY ITS ACCEPTANCE OF THIS NOTE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN

RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE AND ALL LOAN DOCUMENTS AND OTHER AGREEMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY, WHETHER IN CONNECTION WITH THE MAKING OF THE LOAN, COLLECTION OF THE LOAN, OR OTHERWISE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY MAKING THE LOAN EVIDENCED BY THIS NOTE. NO OFFICER OF THE BANK HAS AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the above date.

Carver Theatre Developers, LLC, a Florida limited liability company

By: _____
Inez Long, Manager

This instrument prepared by
And Return Recorded Copy to:
Wesley C. Powell, Esq.
Assistant City Attorney
City of Orlando
400 South Orange Avenue,
Orlando, FL 32801

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (herein "Mortgage"), is made this_____day of_____,2008, by and between the CARVER THEATRE DEVELOPERS, LLC, whose address is315 E. Robinson Street, Suite 660, Orlando, FL 3280 (herein called the "Developer", or "Mortgagor"), and the CITY OF ORLANDO, a Florida municipal corporation, whose address is 400 South Orange Avenue, Orlando, Florida 32801 (herein called the "City" or "Mortgagee").

RECITALS

A. Developer desires to construct, repair or rehabilitate the property described below, pursuant to the Economic Development Incentive Agreement of even date herewith ("Agreement"). All capitalized terms not otherwise defined herein shall have the meaning affixed to it in the Agreement.

B. City will provide funds to Developer for these purposes, so long as Developer abides by the terms and conditions of the Agreement. If Developer does so, then this loan will convert to a grant and Developer will not be required to pay back the amount secured by this Mortgage. Should Developer fail to fulfill all terms and conditions of the Agreement, Developer will be required to repay the loan to the extent provided in the Agreement and Note, failing which City shall have all of the foreclosure and other rights provided in this Mortgage and such other documents executed by Developer, pursuant to the Agreement.

C. Under the foregoing circumstances, Developer is indebted to City in the principal sum of Seventeen Million and no/100 Dollars ($17,500,000.00), of which $10,335,000 shall be allocated to the Public Parking Spaces (Public Parking Funds), $5,185,855 shall be allocated to the Theatre (Theatre Funds), and $1,979,145 shall be allocated to the Incubator Space (Incubator Funds), together with interest thereon, as evidenced by that certain Promissory Note of even date herewith, executed by Developer and delivered to City (the "Note," which term includes any

modification, renewal, extension or alteration thereof), which by reference is made a part hereof to the same extent as though set out in full herein. The interest rate on the loan ("Loan") evidenced by the Note shall be five (5) percent per annum.

NOW THEREFORE, to secure the performance by Developer of all covenants and conditions of the Agreement and Note and all other instruments securing repayment of the Note, and all existing or future notes, loans, guaranties, or other indebtedness owed by Developer, to City, including all future advances, obligatory or otherwise, notwithstanding that such indebtedness may be secured by other mortgages, and including all expenses or obligations incurred by Mortgagee pursuant to any existing or future mortgage, loan or security agreement, and in order to charge the properties, interests and rights herein described with such payment and performance and for and in consideration of the sum of Ten and No/100 Dollars ($10.00), and other good and valuable consideration, Mortgagor does hereby grant and/or assign in favor of Mortgagee a mortgage under the following terms and conditions:

I. The Mortgaged Property

1. **REAL PROPERTY**. Developer does hereby grant, sell, warrant, convey, assign, transfer, mortgage and set over and confirm unto City, all of Developer's estate, right, title and interest in, to and under all that certain real property situate in the County of Orange, State of Florida, described on Exhibit "A" attached hereto and made a part hereof, to have and to hold the same, together with each and every tenement, hereditament, easement, right, power, privilege, immunity and appurtenance thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, and also the estate, right, title, interest, homestead, separate estate, property, possession and claim whatsoever in law as well as in equity of Developer of, in and to the same in every part and parcel thereof unto City in fee simple (the "Property").

2. **FIXTURES AND PERSONALTY**. Developer does hereby further grant unto City a security interest in **(i)** all personal property and fixtures now or hereafter affixed to or located on the Property, which is deemed to be fixtures and a part of the real property under applicable law procured with Loan proceeds; **(ii)** all articles of personal property and all materials delivered to the Property for use in any way thereon, or intended to be incorporated therein, and owned by Developer procured with Loan proceeds; **(iii)** all contract rights, general intangibles, actions and rights of action, including all rights to insurance policies and proceeds, all equipment, including parts, accessories, attachments, special tools, additions and accessions thereto procured with Loan proceeds, **(iv)** all sewer and water tap units, connection fees, impact fees, reservation fees and other deposits or payments made in connection with the reservation, allocation, permitting or providing of wastewater treatment and potable water to the Property, and any and all claims or demands relating thereto, now owned or which may hereafter be acquired by Developer, together with all right, title, interest, estate, equity, demand or claim to the provision of wastewater treatment and potable water to the Property, now existing, hereafter coming into existence, or which may hereafter be acquired by Developer procured with Loan proceeds, **(v)** all permits and licenses, easements, all access, air and development rights, all minerals and oil, gas and other hydrocarbon substances, all royalties, all water and water rights and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in way pertaining to the Property procured with Loan proceeds,

(vi) all general intangibles relating to the development or use of the Property, including without limitation all permits, licenses and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos and good will in any way relating to the Property procured with Loan proceeds, and **(vii)** all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing items. This Mortgage is a self-operative security agreement with respect to the above-described property, but Developer agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as City may request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. City shall have all the rights and remedies in addition to those specified herein of a secured party under the Florida Uniform Commercial Code. This Mortgage covers goods procured with Loan proceeds, which are or are to become fixtures on the Property, and this Mortgage constitutes and is filed as a "fixture filing" (as that term is defined in the Florida Uniform Commercial Code) upon such of the Property which is or may become "fixtures." Developer has an interest of record in the Property.

Everything referred to in paragraphs one (1) and two (2) and any additional property hereafter acquired by Developer, and subject to the lien of this Mortgage or any part of these properties is herein referred to as the "Mortgaged Property."

PROVIDED ALWAYS, that if Developer shall pay to City the Note at the time and in the manner stipulated therein, and in all other instruments securing the Note, and faithfully perform all the covenants and agreements in this Mortgage and the Agreement to be kept, performed or observed by Developer, then this Mortgage shall cease and be void, but shall otherwise remain in full force and effect.

II. Covenants of Developer

3. **COMPLIANCE WITH NOTE AND MORTGAGE; WARRANTY OF TITLE.** Developer shall comply with all provisions hereof, as well as those contained in the Note and every other instrument securing the Note, and will promptly pay to City the principal with interest thereon and all other sums required to be paid by Developer under the Note, this Mortgage and all other instruments securing the Note. Developer shall pay all sums of money secured hereby without any relief whatever from any valuation or appraisement laws. Developer warrants that it is indefeasibly seized of the Property in fee simple and Developer has lawful authority to convey, mortgage and encumber the same as provided by this Mortgage. Developer warrants that Developer has a good and marketable title to an indefeasible fee estate in the real property comprising the Property, subject to no lien, charge or encumbrance except such as City has agreed to accept in writing and Developer covenants that Developer has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. Developer will preserve such title and will forever warrant and defend the same to City and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

4. **PAYMENT OF TAXES AND LIENS**. Developer shall pay all taxes, assessments, liens, levies, liabilities, obligations and encumbrances of every nature and kind

whether now or hereafter imposed, levied or assessed on the Mortgaged Property, this Mortgage or the indebtedness secured hereby. All such payments shall be made before they become delinquent and before any penalty is incurred. Insofar as any such lien or encumbrance is of record the same shall be promptly satisfied or released and evidence of such satisfaction or release shall be given to City.

5. **PAYMENT OF NOTE**. Notwithstanding anything herein to the contrary, as provided in the Agreement and Note and generally as set forth in **Section 13** hereof, Developer shall not be required to make any payments on the Note, so long as Developer abides by all terms and conditions of the Agreement. If the terms and conditions of the Agreement and Note are met, the indebtedness associated with the Theatre Funds secured by this Mortgage shall be forgiven seven (7) years from the date of the final Annual Public Parking & Theatre Reimbursement Funds Payment set forth in section 6 of the Agreement (as evidenced by a recorded partial release of the Mortgage releasing the Theatre from the lien of the Mortgage). If the terms and conditions of the Agreement and Note are met, the indebtedness associated with the Public Parking Funds and Incubator Funds secured by this Mortgage shall be forgiven in its entirety ten **(10)** years from the date of the final Annual Public Parking & Theatre Reimbursement Funds Payment set forth in section 6 of the Agreement (as evidenced by a recorded release of the Mortgage).

6. **REHABILITATION OF PROPERTY**. All construction work ("Work") on the Property shall be performed in conformance with the Agreement requirements. The Work shall be completed as specified therein. Failure to perform and complete the Work, as specified in the Agreement, shall constitute a default under this Mortgage. All loan proceeds shall be used only for those matters specified in the Agreement. Any other use shall constitute a default hereunder. Developer covenants to perform all Work in a safe and workmanlike manner.

7. **INSURANCE**. Developer covenants to keep the Property insured against loss and damage in a sum of not less than fair market value of the Property, with a company acceptable to the City, with City as an additional named insured, and to pay promptly when due all premiums of insurance. In the event any sum of money becomes payable by virtue of such insurance, City shall have the right to receive and apply the same to the indebtedness hereby secured.

In event of loss, Developer shall give immediate notice by mail to City and City may make proof of loss if not made promptly by Developer, and each insurance company concerned is hereby authorized and directed to make payments for such loss directly to City instead of Developer and the insurance proceeds or any part thereof may be applied by City at its option, after deducting all its expenses excluding attorneys' fees, either to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. City is hereby authorized, at its option, to settle and compromise any claims, awards, damages, rights of action and proceeds, and any other payment or relief under any insurance policy. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title, and interest of Developer in and to any insurance policies then in force shall pass to the purchaser or grantee.

8. **CARE OF MORTGAGED PROPERTY**. Developer shall not remove or demolish any building or other property forming a part of the Mortgaged Property without the written consent of City, or permit, commit, or suffer any waste, impairment or deterioration of

the Mortgaged Property or any part thereof, and shall keep the same and the improvements thereon in first-class condition and repair. Developer shall notify City in writing within five (5) days of any serious injury, material damage, or impairment of or occurring on the Property including, but not limited to, serious injury or loss by death or otherwise occurring on the Property.

9. **CONDEMNATION**. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the State of Florida or the United States of America and apply to any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire indebtedness and other sums secured hereby shall, at the option of City, become immediately due and payable. City shall be entitled to all compensation awards, damages, claims, rights of actions and proceeds of, or on account of any such damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Developer's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Developer to City, who, after deducting therefrom all its expenses including attorneys' fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as City shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note, this Mortgage or any other instruments securing the Note. Any balance of such monies then remaining shall be paid to Developer. Developer agrees to execute such further assignments of any payments, awards, damages, claims, rights of action and proceeds as City may require.

10. **HAZARDOUS WASTE**. Developer represents and warrants to the City, based upon its actual knowledge and belief, that there are no hazardous substances on the Property, that Developer has not utilized the Property, nor any part thereof, to treat, deposit, store, dispose of, or place any hazardous substances, as defined by 42 U.S.C.A Section 9601 (14); nor has Developer authorized any other person or entity to treat, deposit, store, dispose of, or place any hazardous substance, as defined above, on the Property, or any part thereof; and to the actual knowledge of Developer, no other person or entity has treated, deposited, stored, disposed of or placed any hazardous substance, as defined above, on the Property or any part thereof.

In the event a release, whether having occurred in the past, present or at some future date, or threatened release of a hazardous substance is discovered on the Property, regardless of whether the Developer was in any way responsible for such release, which subjects the City to liability, in any form whatsoever, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. Section 9607, under the Florida Resource Recovery and Management Act, Florida Statute Section 403.702 (2007) et. seq. or under other statutory or common law, Developer agrees to indemnify, hold harmless and defend City from and against any and all claims or liability that might arise from the existence of hazardous substances on the Property. Such indemnification shall include all damages, costs, expenses, attorneys' fees, or other expense which City may incur.

11. **CITY'S RIGHT TO MAKE CERTAIN PAYMENTS**. In the event Developer fails to pay and/or discharge the taxes, assessments, liens, levies, liabilities, obligations and encumbrances, or fails to keep the Mortgaged Property insured or to deliver the policies, premiums paid, or fails to maintain and repair the Mortgaged Property as herein agreed, City is hereby authorized at its election to pay and/or discharge the taxes, assessments, liens, levies, liabilities, obligations and encumbrances or any part thereof, to procure and pay for such insurance or to make and pay for such maintenance and repairs, without any obligation on its part to determine the validity and/or necessity thereof, and without City waiving or affecting any option, lien, equity or right under or by virtue of this Mortgage. The full amount of each and every such payment made by City shall be immediately due and payable by Developer and shall bear interest from the date thereof until paid at the Default Rate, and together with such interest, shall be secured by the lien of this Mortgage. Nothing herein contained shall be construed as requiring City to advance or expend monies for any of the purposes mentioned in this paragraph.

12. **PAYMENT OF EXPENSES**. Developer shall pay all the costs, charges and expenses, excluding attorneys' fees, whether incurred at the trial or appellate level, disbursements and costs of abstracts of title, incurred or paid at any time by City because and/or in the event of the failure on the part of Developer promptly and fully to perform, comply with and abide by each and every stipulation, agreement, condition and covenant of the Note, this Mortgage and any other instrument securing the Note. Such costs, charges and expenses shall be immediately due and payable, without notice or demand. The full amount of each and every such payment shall bear interest from the date thereof until paid at the Default Rate. All such costs, charges and expenses so incurred or paid, together with such interest, shall be secured by the lien of this Mortgage.

13. **NO TRANSFER, EITHER VOLUNTARILY OR INVOLUNTARILY**. It is understood and agreed by Developer and City that the loan evidenced by the Note has been granted and must be administered in accordance with the terms of the Agreement. The intent of the Agreement is to assist Developer and no other parties to meet Developer's funding needs to complete the Public Parking Spaces, Incubator Space and Theatre. If the Developer fails to comply with the Agreement and fails to cure such non-compliance within the given cure periods, City may, at City's option, declare a default and all sums secured by this Mortgage shall be immediately due and payable.

UPON DEFAULT, CITY MAY INVOKE ANY REMEDIES PERMITTED BY THIS MORTGAGE WITHOUT FURTHER NOTICE OR DEMAND ON DEVELOPER.

14. **ALTERATIONS, ETC.** The Developer shall first obtain the written consent of City, such consent to be granted or withheld at the sole discretion of such City, before (a) removing or demolishing any building now or hereafter erected on the Property, (b) altering the arrangement, design or structural character thereof, (c) making any repairs which involve the removal of structural parts or the exposure of the interior of such buildings to the elements, (d) exploration, drilling, prospecting, mining, excavation or removal of any earth, sand, dirt, rock, minerals, oil, or any other substance, or (e) removing or exchanging any tangible personal property which is part of the Mortgaged Property, unless replaced with tangible personal property of comparable value.

15. **EVENTS OF DEFAULT**. Subject to any grace periods or right to cure as provided in the Agreement and Note, any one of the following shall constitute an event of default:

a. Failure by Developer to pay, as and when due and payable, any installments of principal or interest due under the Note, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by Developer hereunder or any other instrument securing the Note.

b. Failure by Developer to duly keep, perform and observe any covenant, condition or agreement in the Note, this Mortgage, the Agreement, or any other instrument securing the Note.

c. If either Developer or any guarantor or endorser of the Note: **(i)** files a voluntary petition in bankruptcy; **(ii)** is adjudicated as a bankrupt or insolvent; **(iii)** files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for Developer under any law relating to bankruptcy, insolvency or other relief for debtors; **(iv)** seeks, consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator for Developer or for all or any part of the Mortgaged Property; **(v)** makes any general assignment for the benefit of creditors; **(vi)** makes any admission in writing of Developer's inability to pay its debts generally as they become due; **(vii)** a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive from the date of entry thereof; or **(viii)** any trustee, receiver or liquidator of Developer or of any part of the Mortgaged Property is appointed without the prior written consent of City, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive.

d. Any breach of any warranty or incorrect statement made of a material nature within any representation of Developer, contained in the Note, this Mortgage or any other instrument securing the Note or otherwise referenced in this Mortgage.

e. An event of default under any existing or future notes, loans, advances, guaranties, or other indebtedness owed to the City by the Developer, or under any instrument or document referenced in this Mortgage.

f. the dissolution of the Developer prior to completion of the Project.

IV. Remedies of City

16. **ACCELERATION**. If the terms, conditions, obligations and covenants of the Note and Agreement executed in connection herewith and this Mortgage are not fully performed, complied with and abided by, Developer shall be in default and all of the indebtedness secured hereby shall become and be immediately due and payable, at the option of the City, without notice or demand which are hereby expressly waived by Developer, in which event, City may avail itself

of all rights and remedies available to it at law or in equity, including, but not limited to foreclosure of this Mortgage and the sale of Developer's interest in the Property.

17. **OTHER REMEDIES**. If an event of default shall have occurred, City may proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: **(a)** to enforce payment of the Note or the performance of any term hereof or any other right; **(b)** to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction; **(c)** to collect all rents, issues, profits, revenues, income, proceeds or other benefits from the Mortgaged Property; **(d)** to have a receiver appointed, as a matter of strict right, without notice and ex parte, and without regard to the value or adequacy of the security or the solvency of the Developer, to enter upon and take possession of the Mortgaged Property and to collect all rents, issues, profits, revenues, income or other benefits thereof and apply the same as the Court may direct and such receiver shall have all rights and powers permitted under the laws of the State of Florida; **(e)** without notice, in its sole discretion to enter upon and take possession of the Mortgaged Property or any part thereof, to perform any acts City deems necessary or proper to conserve the security and to collect and receive all rents, issues and profits thereof, including those past due as well as those accruing thereafter, and **(f)** to pursue any other remedy available to it, including, but not limited to taking possession of the Mortgaged Property without notice or hearing to Developer. City may take action either by such proceedings or by the exercise of its power with respect to entry or taking possession, or both, as City may determine. In any such case City or the receiver may also take possession of and for these purposes use any and all personal property contained in or located on the Mortgaged Property acquired with the Loan proceeds. The expenses (including but not limited to receiver's fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. City shall (after payment of all costs and expenses incurred) apply such rents, issues and profits received by it on the indebtedness secured hereby in such order as City determines. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. City shall be liable to account only for such rents, issues and profits actually received by City. Developer waives all rights to direct the order in which any of the Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Property marshaled upon any sale.

V. Miscellaneous

18. **NO WAIVER**. No delay or omission of City or of any holder of the Note and Mortgage to exercise any right, power or remedy accruing upon any event of default shall exhaust or impair any such right, power or remedy or be construed as a waiver of any such event of default or constitute acquiescence therein. No waiver by City of any default shall constitute a waiver of or consent to subsequent defaults.

19. **NON-EXCLUSIVE REMEDIES**. No right, power of remedy conferred upon or reserved to City by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power or remedy

given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

20. **FUTURE ADVANCES**. This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of City, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed three times the face amount of the Note plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements at the Default Rate.

21. **OBLIGATION OF DEVELOPER**. Developer shall pay the cost of releasing or satisfying this Mortgage of record.

22. **FURTHER ASSURANCES**. Developer, from time to time, will execute, acknowledge, subscribe and deliver to or at the direction of City such documents and further assurances as City may reasonably require for the purpose of evidencing, perfecting or confirming the lien and security interest created by this Mortgage, or the security intended to be afforded by any other documents related to securing repayment of the Note. Without limitation of the foregoing, City will defend, indemnify and hold City harmless with respect to any suit or proceeding in which the validity, enforceability or priority of the lien or security interest, or both, is endangered or contested, directly or indirectly, and will provide City with such security for the defense of any such suit or proceeding as City reasonably may require. In the event that Developer fails to undertake such defense, City may do so, at the expense of Developer. All costs, expenses and losses, if any, so incurred by City, excluding attorneys' fees, regardless of whether suit is brought and, if suit is brought, for all administrative, trial, appellate and bankruptcy proceedings, if any, will constitute advances by City as provided in section.

23. **Gender**. The terms "Developer" and "City" shall be deemed to include both the singular and plural where appropriate, and where the masculine gender is used, it shall include the masculine, feminine or neuter genders, where appropriate.

24. **Inspection**. City or its agent shall have access to the Property and may make reasonable inspections of the Property to verify that the improvements to be completed with the Loan proceeds are in conformance with the Agreement. Any such inspections shall be solely for City's benefit.

25. **Notice**. The mailing of written notice or demand addressed to the Developer at the last address actually furnished to the City, or mailed to the Property address, postage prepaid, by United States mail, shall be sufficient notice or demand in any case arising under this Mortgage and required by the provisions hereof or by law. Any notice required by the Mortgage will be deemed to have been given to Developer when given in the manner designated herein.

26. **Joint and Several Liability; Captions**. All covenants, agreements and undertakings shall be joint and several. The captions and headings of the paragraphs of this

Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

27. **Severability; Governing Law**. Should any of the terms, conditions, obligations or paragraphs of this Mortgage be determined to be invalid, illegal or unenforceable in any respect, the validity of the remaining terms, conditions or paragraphs shall in no way be affected or prejudiced thereby. This Mortgage shall be governed by the law of the State of Florida.

28. **WAIVER OF JURY TRIAL. DEVELOPER AND CITY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL, OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CITY'S ENTERING INTO THIS AGREEMENT. FURTHER, DEVELOPER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF CITY, OR CITY'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT CITY WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF CITY, OR CITY'S COUNSEL HAS THE AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.**

Signatures Start Next Page

IN WITNESS WHEREOF, the Developer has hereunto signed and sealed this Mortgage and Security Agreement the date and year first above written.

WITNESS:

Sign: _____

Print: _____

DEVELOPER: Carver Theatre Developers, LLC

By: _____
Inez Long, Manager

WITNESS:

Sign: _____

Print: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was duly acknowledged before me by Inez Long, manager of Carver Theatre Developers, LLC, a Florida limited liability company, on behalf of the company. She is personally known to me or who has produced _____, as identification, and she executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal in the county and state last aforesaid, this_____day of_____, 2008.

_____
Notary Public
My Commission Expires:

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando, Florida only.

_____, 2008.

_____
Assistant City Attorney
City of Orlando, Florida

THIS DOCUMENT IS EXEMPT FROM THE PAYMENT OF INTANGIBLE PERSONAL PROPERTY TAX PURSUANT TO SECTION 199.183 (1), FLORIDA STATUTES.

EXHIBIT "A"

LOT 2, BLOCK A, PARRAMORE HERITAGE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 62, PAGE S 46 AND 47, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA

EXHIBIT F

THIS DOCUMENT PREPARED BY
AND RETURN TO:
Wesley C. Powell
Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT FOR CARVER THEATRE

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this ___ day of _____, 2008, by **Carver Theatre Developers, LLC** , a Florida limited liability company (the "Developer"), to and in favor of the **City of Orlando, Florida**, a Florida municipal corporation (the "City").

WHEREAS, Developer is the fee simple owner of the real property located in Orange County, Florida, more particularly described in **Exhibit "A"**, a copy of which is attached hereto and incorporated herein, by reference (the "Property"); and

WHEREAS, the Developer, City and City of Orlando, Florida Community Redevelopment Agency (the "CRA") have entered into an Economic Development Incentive Agreement For Carver Theatre dated _____, 2008 (the "Incentive Agreement"), pursuant to which the Developer will redevelop the Property with a mixed-use midrise structure containing (i) an approximately 320-seat multiuse performing arts theatre occupying approximately 8,400 square feet of space (the "Theatre"), (ii) approximately 21,000 square feet of ground floor retail use (the "Retail Space"), of which a minimum of 5000 square feet shall be dedicated to the use of the Incubator Program (the "Incubator Space"), (iii) approximately 60,000 square feet of office use (the "Office Space"), (iv) approximately 17 multifamily residential units (the "Residential Space"), and (v) an integrated parking garage containing

approximately 302 parking spaces (the "Parking Structure", of which 281 parking spaces shall be dedicated for the use of the general public (the "Public Parking Spaces'), all of which are hereinafter collectively referred to as the "Project"; and

WHEREAS, the Incentive Agreement further provides for the City's and CRA's providing funds for the capital cost of constructing the Public Parking Spaces, Incubator Space and Theatre (the "Public Component"), subject to the Developer's compliance with certain requirements set forth in the Incentive Agreement, including the use of the Public Component for public purposes for a time certain; and

WHEREAS, Owner and City wish to ensure that the Public Component continues to be operated and used for the public purposes set forth in the Incentive Agreement for a period of not less than twenty-five years (25) years, regardless of any subsequent changes in ownership of the Property.

NOW, THEREFORE, Owner declares that said Property shall be held, transferred, encumbered, used, sold, conveyed, and occupied, subject to the covenant hereinafter set forth expressly and exclusively for the use and benefit of said Property and of each and every person or entity who now or in the future owns any portion or portions of the Property.

1. **RESTRICTION OF USE**. The Public Component shall only be used for the purposes and in compliance with the requirements set forth in the Incentive Agreement. In addition, the conditions, requirements and restrictions regarding the Public Component contained in the Incentive Agreement, are incorporated herein by this reference and made a part hereof, including the terms and definitions contained therein. All terms not defined herein shall have the meaning ascribed to such terms in the Incentive Agreement.

2. **BINDING NATURE OF COVENANTS**. This covenant shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of Substantial Completion of the Project (the "Public Use Period").

3. **ENFORCEMENT OF DECLARATION OF RESTRICTIVE COVENANT**. Enforcement of the foregoing restrictive covenant shall be by proceedings at law or in equity against any person or persons violating or attempting to violate such covenant to restrain violation. Such action may be brought by the City of Orlando, the CRA or its successor.

4. **ATTORNEYS' FEES**. Any person who successfully brings an action for enforcement of this restrictive covenant shall be entitled to recover attorneys' fees and costs for such action, including any successful appellate proceedings, from the then owner of the affected portion or portions of the Property.

IN WITNESS WHEREOF, Developer has executed this Declaration of Covenants and Restrictions, the day and year first above written.

Carver Theatre Developers, LLC

By:_____
Inez Long, Manager

WITNESS:

Sign: _____

Print: _____

WITNESS:

Sign: _____

Print: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was duly acknowledged before me by Inez Long, manager of Carver Theatre Developers, LLC, a Florida limited liability company, on behalf of the company. She is personally known to me or who has produced _____, as identification.

WITNESS my hand and official seal in the county and state last aforesaid, this ___ day of_____, 2008.

_____
Notary Public
My Commission Expires:

EXHIBIT "A"

LOT 2, BLOCK A, PARRAMORE HERITAGE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 62, PAGES 46 AND 47, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA

EXHIBIT G

Developer Insurance

I. Insurance Coverage. Developer shall obtain and maintain in full force and effect at all times, the following insurance in form satisfactory to the City, with one or more insurers qualified to do business in Florida:

(i) "all-risk" property insurance covering the Project building and its personal property together with the value of any improvements made to, on or within the Property against damage caused by fire or other casualty for the full replacement value of such property and any income in connection therewith, excluding the peril of windstorm which may be insured for probable maximum loss. Probable maximum loss shall be determined by a loss study conducted by a certified engineering firm and shall be acceptable to the City. Any deductible shall not exceed $50,000.00 and any wind percentage deductible shall not exceed five percent (5%), unless such other amounts are approved by the City.

(ii) commercial general liability insurance, issued on ISO form CG 00 01 or its equivalent, to cover Developer against liability for injury and/or death of any person(s) and for damage to personal property occasioned by or arising out of any construction, condition, use or occupancy of the Property in an amount not less than $5,000,000 per occurrence, including limits provided by any excess or umbrella policies. The City and CRA shall be named as an additional insured with CG2026 Additional Insured – designated Person or Organization endorsement, or its equivalent to all commercial general liability policies.

(iii) worker's compensation insurance in accordance with Chapter 440, Florida Statutes & employer's liability insurance with limits of not less than $1,000,000.00 per occurrence.

(iv) business automobile liability insurance with limits not less than $1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event Developer does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Developer to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Developer shall provide this coverage on a primary basis.

II. Insurance Administration. Annually, and from time to time upon request, Developer shall provide the City with current certificates (including renewal certificates) of insurance evidencing these coverages. Failure by the City to request certificates of insurance or to identify deficiencies in coverage from evidence provided will not be construed as a waiver of Developer's obligation to maintain said insurance. The City shall be notified in writing of any reduction, cancellation or

substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said action. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, who are licensed and authorized to do business under the laws of the State of Florida or in the case of surplus carriers must meet the requirements specified in Section 626.915, Florida Statutes.

Every three (3) years the Parties shall, in good faith negotiate whether there should be increases/decreases (and if so, the amount thereof) in the amounts of liability insurance required hereunder. If the Parties are unable to agree, the matter shall be resolved by binding mediation. One (1) mediator selected by mutual agreement of the parties shall hear the mediation. If the parties cannot agree on a mediator, then either party may seek to have the mediator selected by the American Arbitration Association and the decision of the American Arbitration Association as to the appointment of the mediator shall be binding on the parties. The site of the mediation shall be Orange County, Florida.

III. Waiver of Subrogation. Developer hereby agrees to waive subrogation which any insurer of Developer may acquire by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Developer, its employees, agents, Prime Contractor, Contractors, Design Architect, and Design Professionals.

EXHIBIT H

This Instrument Prepared by
And Return Recorded Copy to:
Wesley C. Powell, Esq.
Assistant City Attorney
City of Orlando
400 South Orange Avenue,
Orlando, FL 32801

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is dated this _____ day of _____, 2008 (the "Effective Date"), by and among the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the "City"), the **CITY OF ORLANDO, FLORIDA, COMMUNITY REDEVELOPMENT AGENCY**, a Florida public agency duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the "CRA"), and **CARVER THEATRE DEVELOPERS, LLC**, a Florida limited liability company duly created, organized, and existing under, and by virtue of, the laws of the State of Florida, and currently having its principal place of business at 315 E. Robinson St., Suite 660, Orlando, Florida 32801 (the "Developer").

The City, CRA and Developer have entered into Economic Development Incentive Agreement For Carver Theatre dated _____, 2008 (the "Incentive Agreement") relating to the City's and CRA's funding of the Public Parking Spaces, Incubator Space, and Theatre (the "Public Component") to be constructed, operated and maintained by the Developer as part of the Developer's redevelopment project on the following described property (the "**Property**"):

See Legal Description of Property attached hereto,
and incorporated herein, by reference,
as Exhibit A

Unless otherwise defined herein, all capitalized terms herein shall have the meaning set forth in the Incentive Agreement. The terms and conditions of the Incentive Agreement include, but are not limited to, the following:

1. The City and CRA will provide the Total Incentive Package to the Developer, subject to the Developer's compliance with the terms and conditions of the Incentive Agreement, including, but not limited to the Performance Benchmarks.

2. As security for the City's and CRA's investment of public funds in the Public Component, the Total Incentive Package shall be classified as a forgivable loan. Such loan shall be evidenced by a promissory note and mortgage, with the mortgage recorded as a lien on the Property.

3. The Developer shall not mortgage, lien or otherwise encumber the Property, nor shall the Developer take any action or fail to take any action that would cause a lien, mechanic's or otherwise, to be placed on the Property, except as set forth in the Incentive Agreement. Provided that the Developer complies with the performance standards of the Incentive Agreement, note and Mortgage for the term thereof, the loan shall be forgiven without any obligation for repayment, and the Mortgage shall be released of record.

4. The Developer shall execute and record a Declaration of Covenants and Restrictions in favor of the City requiring that the Public Component comply with the uses and conditions set forth in the Incentive Agreement for a period of twenty-five (25) years from the date of Substantial Completion of the Project, after which the Declaration of Covenants & Restrictions shall automatically terminate and be of no further force or effect.

This Memorandum of Agreement shall be recorded in the public records of Orange County, Florida for the purpose of giving notice of the Incentive Agreement and of the rights and obligations created thereby, all of which are hereby confirmed.

*[Remainder of page intentionally left blank.]**

Signature Pages to Follow

CITY OF ORLANDO, FLORIDA,

By: _____
Mayor / Mayor Pro Tem

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM AND LEGALITY
THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

_____
City Attorney

WITNESSES:

Sign: _____

Print: _____

Sign: _____

Print: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by _____ and Alana C. Brenner, the Mayor/ProTem and City Clerk, respectively of CITY OF ORLANDO, FLORIDA, known to me to be the persons described herein and who executed the foregoing on behalf of the CITY OF ORLANDO, FLORIDA.

_____
Signature of Notary Public

_____
Print Notary Name
My Commission Expires:_____
AFFIX NOTARY STAMP

CITY OF ORLANDO, FLORIDA, COMMUNITY REDEVELOPMENT AGENCY:

By: _____
Chairman

ATTEST:

By:_____
Executive Director

WITNESSES:

Sign: _____

Print: _____

Sign: _____

Print: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by _____ and Thomas C. Chatmon, the Chairman and Executive Director, respectively, of CITY OF ORLANDO, FLORIDA, COMMUNITY REDEVELOPMENT AGENCY, known to me to be the persons described herein and who executed the foregoing on behalf of the CITY OF ORLANDO, FLORIDA, COMMUNITY REDEVELOPMENT AGENCY .

_____
Signature of Notary Public

_____
Print Notary Name
My Commission Expires:_____
AFFIX NOTARY STAMP

CARVER THEATRE DEVELOPERS, LLC,
a Florida limited liability company:

By: _____

Name: _____

Title: _____

WITNESSES:

Sign: _____

Print: _____

Sign: _____

Print: _____

STATE OF FLORIDA }
COUNTY OF ORANGE }

PERSONALLY APPEARED before me, the undersigned authority, _____, [ ] well known to me, or [ ] who has produced his/her _____ as identification, and known to me to be the _____ of Carver Theatre Developers, LLC, and acknowledged before me that he/she executed the foregoing instrument on behalf of Carver Theatre Developers, LLC, as its true act and deed, and that he/she was duly authorized to do so.

Witness my hand, and official seal this _____ day of _____, 2008.

_____
Notary Public
My Commission expires:

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

LOT 2, BLOCK A, PARRAMORE HERITAGE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 62, PAGES 46 AND 47, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA