

RETURN TO:

BRIAN W. COPLEY
PO BOX 1050
LEXINGTON, NE 68850

ENCROACHMENT AGREEMENT

(EASEMENT FOR ENCROACHMENT INTO PUBLIC RIGHT-OF-WAY)

This Encroachment Agreement (“Agreement”) is made and entered into this _____ day of _____, 2016 (“Effective Date”) by and between the CITY OF LEXINGTON, NEBRASKA (the “GRANTOR”) and LEXINGTON PUBLIC SCHOOLS (“GRANTEE”).

RECITALS

WHEREAS the GRANTOR is authorized to regulate an encroachment or obstruction on a public street within the City of Lexington, Nebraska and to permit and prescribe the terms for the use of a portion of a City street or sidewalk for a private purpose if the use does not interfere with the public use of the street or sidewalk or create a dangerous condition on the street or sidewalk;

WHEREAS the GRANTEE is the owner of the property generally located within the City at 615 N Washington, Lexington, NE 68850, legally described as set forth in Exhibit A and commonly referred to as the “Majestic Theater” (hereinafter the “Property”);

WHEREAS the Property is located adjacent to and abuts the GRANTOR’s public street and right-of-way (including a public sidewalk);

WHEREAS in connection with and as a part of its operation of it’s movie theater the GRANTEE intends to place an overhang and columns above and on the aforementioned public street and right of way, as described and shown on Exhibit A attached hereto (hereinafter known as “Exhibit A” or “Encroachment Area”);

WHEREAS the GRANTEE has filed with the GRANTOR an Application for Encroachment into City Right of Way for the purposes of placement of said overhang and columns, as depicted on Exhibit A;

WHEREAS as set forth herein and subject to the terms and conditions of this Agreement, the GRANTOR has agreed to allow GRANTEE to place said overhang and columns above and on the public right of way.

1. **RATIFICATION.** The above and foregoing Recitals are true and correct and are incorporated herein and made a part of this Agreement for all purposes.
2. **GRANT OF EASEMENT.** The GRANTOR does hereby grant to GRANTEE an easement for the placement of an overhang and columns above, on, and within the public right and the public sidewalk as shown on the attached Exhibit A. The term of this easement shall be perpetual and shall be construed as running with the land and shall be binding on the heirs, personal representatives, assigns, or successors of the parties.
3. **USE, OPERATION, MAINTENANCE.** All use, operation, and maintenance of the Encroachment Area under this Agreement by GRANTOR and GRANTEE shall be conducted and performed in such a manner so as not to interfere with the public use of any public sidewalk, right-of-way, or street or to create a dangerous condition on any public sidewalk, right-of-way, or street. The GRANTOR's approval of any use, operation or maintenance of the Encroachment Area by GRANTEE shall not and does not relieve GRANTEE of responsibility and liability for such use, operation and/or maintenance. The use, operation, and maintenance of the Encroachment Area by GRANTEE shall be conducted and performed in a safe, clean, and neat manner, as determined by the GRANTOR, and the Encroachment Area shall be maintained by GRANTEE in good condition, as determined by the GRANTEE. Prior to instituting any maintenance or work on or within the Encroachment Area, GRANTEE (as required by Applicable Law) shall secure from the GRANTOR any necessary permits. The GRANTOR shall be the sole judge of the quality of the maintenance, and upon written notice from the City, the GRANTOR or the GRANTOR's designee, stating in general terms how and in what manner the maintenance is required, GRANTEE shall perform such required maintenance. If GRANTEE fails to do so, the GRANTOR shall have the right (in addition to any other rights of the GRANTOR provided for herein) to perform such maintenance, the cost of which shall be borne by GRANTEE. In connection with this Agreement, the GRANTEE is and shall at all times be and remain responsible and liable for the acts and omissions of GRANTEE, its owners, directors, partners, managers, officers, employees, representatives, agents, contractors, consultants, licensees, guests, and invitees, and their respective owners, directors, partners, managers, officers,

employees, representatives, agents, contractors, consultants, licensees, guests, and invitees. The GRANTOR has and shall at all times have the right to enter into, upon, under and over the Encroachment Area for any purpose whatsoever, including to make any modifications, repairs, or other changes to the Encroachment Area. GRANTEE shall be responsible for removing said encroachment upon thirty (30) days written notice that the area of encroachment is necessary for public improvements or maintenance or repairs of such improvements, and if GRANTEE fails to do so, the GRANTOR shall have the right (in addition to any other rights of the GRANTOR provided for herein) to perform such removal, the cost of which shall be borne by GRANTEE.

4. **INSURANCE.** At all times in connection GRANTEE shall purchase and maintain in a company lawfully authorized to do business in Nebraska at least \$1,000,000.00 of liability insurance. The GRANTOR shall be named as an additional insured with respect to such liability policy. GRANTEE shall provide certificates of insurance indicating such coverage upon request by GRANTOR.
5. **GRANTEE'S INDEMNITY OBLIGATION.** GRANTEE covenants, agrees to, and shall DEFEND, INDEMNIFY, AND HOLD HARMLESS the GRANTOR and the elected and appointed officials, and the officers, employees, agents, and representatives of the GRANTOR, from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the GRANTOR that arise out the use, occupancy, or maintenance of, or operation within, the Encroachment Area. This defense, indemnity, and hold harmless provision shall survive the termination or expiration of this Agreement.
6. **GOVERNING LAW; VENUE.** This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Nebraska, without regard to choice of laws rules of any jurisdiction.
7. **SEVERABILITY.** The terms, conditions, and provisions of this Agreement are severable, and if any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

8. **BINDING.** This Agreement shall be binding on and inure to the benefit of the parties and their respective successors.
9. **WAIVER.** All waivers must be in writing and signed by the waiving party.
10. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement represents the entire and integrated agreement between the GRANTOR and GRANTEE with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of the GRANTOR and GRANTEE or it shall have no effect and shall be void.

SIGNED by the parties on the dates set forth below, and this Agreement shall be effective as of the Effective Date set forth above.

{Signature and Notary Page to Follow}

