

RESOLUTION NO. 2023 - 83

A RESOLUTION AUTHORIZING THE ADMINISTRATION TO ENTER INTO AN AGREEMENT FOR THE MANAGEMENT OF THE CASSIDY THEATRE WITH CASSIDY THEATRE, INC. AN OHIO NOT FOR PROFIT CORPORATION, AND DECLARING AN EMERGENCY

WHEREAS, the City of Parma Heights entered into an Agreement with Cassidy Theatre, Inc. for the management of the Cassidy Theatre through December 31, 2023; and

WHEREAS, the City has reached terms of a new Agreement for the management of the Cassidy Theatre; and

WHEREAS, the City and Cassidy Theatre, Inc. are desirous to continue their relationship and enter into a new Agreement for the management of the Cassidy Theatre in order to provide for revised terms and conditions.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. In accordance with the Charter and Ordinances of the City of Parma Heights, the Administration is authorized and directed to enter into an Agreement between the City of Parma Heights and Cassidy Theatre, Inc., an Ohio Not for Profit Corporation, for the management of the Cassidy Theatre, in the form attached hereto as "Exhibit A" and made a part hereof by reference, as if fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Resolution is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality, and for further reason that it is necessary to avoid a disruption in the management of the Cassidy Theatre; wherefore, this Resolution shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: December 11, 23

Thomas Rounds
PRESIDENT OF COUNCIL

ATTEST: Barbara Allen
CLERK OF COUNCIL

December 11, 2023
APPROVED

FILED WITH
THE MAYOR: December 11, 23

Marie Gallo
MAYOR MARIE GALLO

**AGREEMENT
BETWEEN
THE CITY OF PARMA HEIGHTS
AND THE
CASSIDY THEATRE, INC.
FOR THE
MANAGEMENT
OF
THE CASSIDY THEATRE**

THIS AGREEMENT ("Agreement") entered into between the CITY OF PARMA HEIGHTS, a Municipal Corporation ("City") and THE CASSIDY THEATRE INC., an Ohio Not for Profit Corporation ("Manager"), this 13 day of January, 2024.

WHEREAS, the City and Manager desire to enter into a Management Agreement for the period beginning on January 1, 2024 and ending on December 31, 2024; and

WHEREAS, the City is desirous of promoting the use of its building formerly operated by the City as the Theatre ("Facility"); and

WHEREAS, the City is desirous of providing a theatre experience, educational programs, arts opportunities and rental opportunities for persons desiring to rent the community rooms in the facility.

NOW, THEREFORE, IT IS AGREED between the City and the Manager that the Agreement for Management of the Cassidy Theatre be entered into upon the following terms and conditions.

Section 1. FACILITY. Upon and subject to the terms and conditions of Agreement, City hereby grants to Manager the use of the facility located at 6200 Pearl Road, Parma Heights, Ohio formerly operated by the City as the Cassidy Theatre located in the Greenbrier Commons located in Parma Heights, Ohio. Manager hereby accepts the facility in its present, "AS IS" condition.

(a) **Theatre Name.** The name of the Theatre is to remain Cassidy Theatre.

(b) **Definition.** The Facility shall be defined as the Theatre Lobby, Theatre Offices, and Theatre Costume Area. The Facility shall not include Rooms A or B.

(c) **General Use.** Either party is responsible for damage to the Facility that is due to their respective use of the Facility.

Section 2. USE BY MANAGER. Manager shall use the Facility for the operation of a community theatre, as recited in the preambles to this Agreement. Manager shall operate and maintain the facility in a neat, clean, safe, and healthy condition according to City Ordinances and direction of the proper public officers. The Manager will be responsible for the following:

- a. The production expenses for all theatrical shows.
- b. All staff are to be the exclusive employees of the Manager.
- c. The Manager may propose to sublease the facilities, subject to the prior written approval of the City, after providing all lease agreements to the Law Department at least fourteen (14) business days prior to the event. The lease shall be approved by the City prior to the event and shall contain provisions for security, traffic control, if necessary, liability insurance and a release and hold harmless clause signed in favor of the City.
- d. The Manager shall submit a proposed list of shows, dates, camps, and pre-arranged events to the Mayor for the following year by September 15th for approval prior to finalizing a season schedule by October 15th.
- e. The Manager may have the use of Rooms A and B by giving reasonable notice to the City whilst the City does not have plans for Rooms A and B on the requested date(s), subject to approval by the City. The Manager will provide the maintenance personnel when it uses Rooms A and/or B. In such a circumstance, the Manager shall be responsible for cleaning and restocking the restrooms, sweeping floors, returning tables and chairs to storage locations as they were found, and removal of garbage from the Facility.
- f. The Manager shall have use of the adjacent kitchen facility and costume shop.
- g. The Manager may, subject to written permission from the City, permit liquor, whether spirituous, vinic or fermented, to be sold on said premises. The City may provide written consent after a timely request, a demonstration of appropriate insurance, a demonstration of appropriate indemnification of the City, and appropriate licensure from the State of Ohio, Department of Liquor Control, maintained at the Manager's expense. (See Section 961.01 of the Codified Ordinances, attached).
- h. The Manager shall have access to Room B during the month of July, for the purpose of staging a theatre camp. The theatre camp shall not hinder the City's ability to host its own summer camp or weekend events.
- i. The Manager may petition the City for permission to stage outdoor productions on City grounds subject to the City's written consent.
- j. The Manager shall maintain appropriate licensure by the Cuyahoga County Board of Health for any food concessions at the Manager's expense.

Section 3. USE BY CITY. The City shall have the use of Rooms A and B, and the adjacent kitchen, and reserves the right to rent and permit the use of Rooms A and B to outside parties.

- a. The City reserves use of the facility for official City events on an as needed basis, on dates to be determined, with reasonable notice to the Manager. Reasonable notice shall be at least two (2) weeks in advance of any event planned for the facility.
- b. There shall be no charge to the City for its use of the facility.
- c. The City will provide the maintenance personnel when it uses the facility.

Section 4. TERM. This Agreement shall be from January 1, 2024 to December 31, 2024. The City and Manager shall have the option to extend the Agreement beyond the expiration date. Should the parties mutually elect to extend the Agreement, they shall confirm in writing to extend for a fixed period of time. Either the City or Manager shall have the right to terminate this agreement upon thirty

(30) days prior written notice.

Section 5. FEES. Fees of \$1,000.00 (One Thousand Dollars) shall be payable for each month of the Term of this Agreement. Each installment payment shall be due in advance on the first day of each calendar month during the lease term, subject to the terms of Section 18(i). All fees, and all other payments due to the City under this Agreement, shall be made to the City at 6281 Pearl Road, Parma Heights, Ohio 44130 or at such other address as the City may designate.

The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

Section 6. TAXES. During the Term hereof; Manager shall, be responsible for all personal property taxes and real estate taxes directly attributable to Manager's use. Manager shall have the right to contest all taxes, assessments, charges and impositions, and City agrees to join in such contest, if required by law, and to permit the Manager to proceed with the contest in City's name, provided the expense of the contest is borne by the Manager.

Section 7. REVENUES. All revenues ("Revenues") generated from the operation of the Theatre from events conducted by the Manager shall be and remains the sole property of the Manager.

Revenues generated from events conducted by the City shall be retained by the City.

If Manager and City agree in writing prior to the date of an event conducted by the City, then participation fees may be paid to the Manager based upon the involvement of the Manager in the event. If there is no agreement, in writing, then the City shall retain said revenues.

Section 8. MAINTENANCE AND REPAIRS. The Manager shall, at its sole cost and expense, maintain and repair the interior of the facility, including the lobby, stage, theatre seating area, office area, restrooms, and dressing rooms.

The Manager shall provide evidence of maintenance and repairs to the Director of Public Service on or before the 1st day of each month of this Agreement.

In the event that the City must assume the duties of the Manager in whole or in part to maintain and repair any portion of the interior of the Facility, the Manager shall be assessed the cost of such maintenance and repair at a rate of \$48.64 per hour. The minimum charge for such a circumstance shall be four (4) hours per occurrence for each participating employee of the City.

The Manager and the Director of Public Service shall meet prior to the beginning of the lease term to inspect the facility and establish a procedure for maintenance and repair.

The City shall maintain and repair mechanical (including HVAC), plumbing, and electrical systems, and maintain the roof.

A) **SUBCONTRACTOR'S INSURANCE.** Manager shall require that all subcontractors

brought onto the property have insurance coverage at the subcontractor's expense, or be listed as insured on the Manager's insurance policy (as documented in a Certificate of Insurance if requested) in the following minimum amounts:

- a) Workers' compensation - statutory amount
- b) Employer's liability
- c) Comprehensive general liability
 - 1. \$100,000 bodily injury per person - \$300,000 per occurrence
 - 2. \$100,000 property damage

Higher amounts may be required if the work to be performed is sufficiently hazardous. The Manager shall obtain and keep on file a certificate of insurance which shows that the subcontractor is so insured. In addition, where required by law, subcontractors must obtain building permits from the City.

Section 9. FIXTURES AND ALTERATIONS.

A) INSTALLATION BY MANAGER. The Manager and Director of Public Service shall meet within two (2) weeks of the execution of the Agreement to inventory the installation(s) made by the Manager during the Term of the prior Agreement between the parties. The Manager is prohibited from affixing any item, including signage, to any surface of the Theatre Lobby, whether by adhesive, nail, tack, or any other means.

The Manager shall throughout the Term of the Agreement, at its own expense, maintain and clean the Facility and all improvements thereon and shall deliver up the Facility in a clean and sanitary condition at the expiration or termination of this Agreement or the termination of the Manager's right to occupy the facility, in a good repair and condition, reasonable wear and tear excepted. Upon the expiration or termination of this Agreement or the termination or the termination of Manager's right to occupy the leased premises, Manager shall surrender all keys for the facility to the City at the place then fixed for the payment of rent and City shall have the right to reenter and resume possession of the Facility. No act done by Manager or any of Manager's agents (hereinafter defined) during the term of the lease shall be deemed an acceptance of a surrender of Facility, and no agreement to accept a surrender of Facility shall be valid unless the same be made in writing and executed by Manager.

B) REMOVAL BY MANAGER. Upon the expiration or earlier termination of this Agreement, the Manager shall remove all trade fixtures and other equipment owned by the Manager and located within Facility, in which event Manager shall repair damage to Facility caused by such removal. The City may, failing removal by the Manager, at Manager's expense, perform such removal.

Section 10. LIENS. Manager shall have no ownership rights in the facility and shall not suffer or permit any mechanic's lien or other lien to attach to the Facility or any building or improvement thereon in connection with any work performed by Manager, its agents or contractors, and whenever and as often as any such lien or liens shall be filed or shall attach. Manager shall, within thirty (30) days thereafter, pay such lien or liens or procure their removal

from the Facility.

Section 11. REPRESENTATION. Manager represents and warrants to the City that it is an independent contractor and is not an employee of the City and none of its employees, if there be any, shall be employees of the City but shall, at all times, be the sole and exclusive employees of Manager. Manager agrees to indemnify and make the City whole in the event that there are claims made by its employees against the City.

Section 12. ADDITIONAL INSURANCE. Manager must furnish a certificate evidencing workers' compensation.

Section 13. GENERAL INDEMNIFICATION. Manager hereby indemnifies and agrees to defend and hold City and its employees, agents, and contractors harmless from and against any and all loss, cost, damage, claim or expense, including attorney fees, caused by Manager or any person or party for whom Manager is legally responsible.

Section 14. INSURANCE.

- A) **PROPERTY INSURANCE.** City shall obtain and keep in force during the Term, at City's cost and expense, commercial property insurance covering loss or damage to Facility in an amount not less than the replacement value thereof, as the same may be increased from time to time, and providing protection against all perils covered under a standard "special for" or "all risk" policy of commercial property insurance.
- B) **LIABILITY INSURANCE.** Manager shall obtain and keep in force, at its sole cost and expense, commercial general liability insurance insuring against any and all claims for damages resulting from injury or death to persons or injury to property occurring in and about the Facility and arising out of Manager's negligent acts or omissions in connection with its use or occupancy of the Facility, or the negligent acts or omissions of any person using the Facility in connection with Manager's business. The amount of liability coverage shall be not less than \$2,000,000.00 per occurrence and \$2,000,000.00 general aggregate for property damage and injury or death to persons. The City shall be named as an additional insured on said policy of insurance.

Manager is solely responsible for obtaining insurance at its sole expense to cover its personal property.

- C) **CERTIFICATES.** Manager shall deliver to City certificates evidencing the existence and amount of the insurance required above. The Manager shall obtain a Certificate of Additional Insurance from its Insurer, which Certificate shall name the City as an Additional Insured by the Manager's Insurance Carrier. The Manager shall present the Certificate to the City, with a copy to the Law and Finance Departments.

Section 15. FIRE OR OTHER CASUALTY. If at any time during the Term of this Agreement or any improvements now or hereafter erected on the Facility shall be destroyed or damaged by fire or any other insured casualty, then, subject to and conditioned upon the amount of

insurance proceeds recovered by City, City shall repair, reconstruct and restore the Facility. If the Facility, or any substantial part thereof, are damaged or destroyed to such an extent that it is impractical to repair or restore the Facility to the approximate condition it was in prior to being damaged within one hundred eighty (180) days of the date of the damage or destruction, City shall have the right to terminate this Agreement upon notice to Manager. The fees shall abate during any period of restoration.

Section 16. CONDEMNATION.

A) **ENTIRE TAKING.** If the Facility shall be taken, appropriated or condemned for any public or quasi-public use or purpose, then this Agreement shall automatically cease and terminate as of the date Manager must relinquish possession of the Facility or when title to the Facility vests in the taking authority, whichever occurs latest, and all fees and other charges paid under this Agreement shall be apportioned as of the date of termination. The City will advise the Manager of any plan to appropriate or condemn the property as soon as such information becomes available to the City.

B) **PARTIAL TAKING.** If less than all of the Facility shall be taken, appropriated or condemned for any public or quasi-public use or purpose, and the remaining portion not so taken is, in the opinion of Manager, sufficient for the operation of Manager's business as it is then being conducted, Manager shall continue to use the portion not so taken and there shall be an equitable and proportionate reduction in the fees hereunder.

Section 17. DEFAULT. Manager shall be in default hereunder if any one or more of the following events (hereinafter referred to individually as an "Event of Default") shall occur (i) Manager shall fail to pay any monthly installment of fees or any other amounts or charges payable by Manager under this Agreement and such failure shall continue for more than five (5) days after the date such payment was due, (ii) Manager shall neglect or fail to perform or observe any of the other terms, covenants or conditions contained in the Agreement and such failure shall continue for more than thirty (30) days after City's notice to Manager of such failure (or such longer period that is reasonable if the obligation is incapable of cure within such 30-day period and Manager has commenced such cure and diligently prosecutes the same to completion). (iii) Manager shall become bankrupt or insolvent or make a general assignment for the benefit of creditors, (iv) Manager's business and use hereunder shall be taken upon an execution, attachment or other process of laws, or (v) a receiver or trustee shall be appointed to take charge of all or any substantial part of City's property and such appointment shall not be vacated or otherwise nullified within ninety (90) days thereafter. Upon the occurrence of an Event of Default and while such Event of Default continues, City shall have the right, at its option, to terminate this Agreement upon specified date not less than fifteen (15) days after the date of the notice of termination and this Agreement shall then automatically expire on the date so specified unless Manager's default is cured or waived prior thereto.

Section 18. COMPLIANCE WITH LAW. Manager shall comply with all governmental laws, ordinances, rules, regulations, orders or other requirements of all governmental bodies having jurisdiction over the Facility and/or Manager's business at the Facility.

Section 19. ASSIGNMENT. Manager shall have no right to assign this Agreement, or any part thereof, without the express prior written consent of the City.

Section 20. **RIGHT TO ENTER THE FACILITY.** City and its agents shall have the right to enter the Facility at any time to examine it.

Section 21. **SURRENDER OF THE FACILITY.** At the expiration of the term, or upon any earlier termination of this Agreement for any reason, Manager shall surrender the Facility in broom-clean condition and in good condition and repair. In the event that the Manager should hold over and fail to surrender, for any reason, the City may exercise self-help to assert possession of the Facilities, change the locks, if necessary, take such further action, as necessary, to secure and control the Facilities. In the event that the Manager or its personnel remain on or refuse to surrender and vacate the Facilities, the City may proceed against them in Trespass. In the event that legal action is necessary or appropriate, the Manager shall be responsible for damages and costs, including attorney fees, should the City prevail in such action.

Section 22. **WAIVER.** The waiver by either party of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant, or condition of this Agreement. City's acceptance of fees and charges and other amounts hereunder shall not deem to be a waiver of any preceding breach by Manager of any term, covenant or condition of this Agreement. No term, covenant, or condition of this Agreement shall be deemed to have been waived by a party hereto unless such waiver is in writing signed by such party.

Section 23. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties in regard to the Facility. There are no oral agreements existing between the parties hereto.

Section 24. **MODIFICATION OF AGREEMENT.** This Agreement shall not be modified except in writing signed by both the Manager and the City.

Section 25. **GOVERNING LAW; SEVERABILITY.** This Agreement and its performance shall be governed, interpreted and regulated by and in accordance with the laws of the State of Ohio. If any portion of this Agreement should be invalid or held invalid, the remainder of it shall be unaffected and remain in full force and effect.

Section 26. **NOTICE.** Any notice, demand, or request required to be given by City or Manager under this Agreement shall be in writing signed by the party giving it, and sent by certified mail, return receipt requested, to the party to be notified as follows:

TO CITY:
City of Parma Heights
Attention: MAYOR MARIE GALLO
6281 Pearl Road
Parma Heights, Ohio 44130

TO MANAGER:
The Cassidy Theatre, Inc.
Attention: MICHAEL CARAFFI, President

6200 Pearl Road
Parma Heights, Ohio 44130

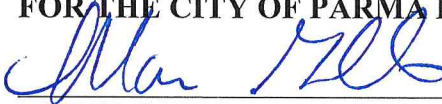
Or such other address as City or Manager, respectively, may designate by such a notice. Service shall be complete upon three (3) business days after mailing as set forth above, except in the case of a notice to change an address in which case service shall be complete when notice is received by the addressee. Notice sent by any means other than certified mail, return receipt requested, shall be deemed delivered when such notice is received by the addressee.

Section 27. SUCCESSORS. The provisions of this Agreement shall apply to and be binding upon the successors and assigns of both Manager and City.

Section 28. SURVIVABILITY. The terms, conditions, agreements and indemnifications contained in the Agreement shall survive the expiration of this Agreement or of any extension(s) of it.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 1st day of January, 2024

FOR THE CITY OF PARMA HEIGHTS:



MARIE GALLO

Mayor

Date: 1/2/24

FOR THE CASSIDY THEATRE INC.:



MICHAEL CARAFFI

President

Date: 1/2/24
