

**AFFIDAVIT IN SUPPORT OF  
FINANCIAL HARDSHIP APPLICATION OF LIVE NATION WORLDWIDE, INC.  
AND iPIC-GOLD CLASS ENTERTAINMENT, LLC**

STATE OF TEXAS )  
 ) ss.  
COUNTY OF HARRIS )

Before me, the undersigned Notary Public in and for said County and State, personally appeared James Tucker, Senior Vice President Legal Affairs for Live Nation Worldwide, Inc., a Delaware corporation, successor-in-interest to Boyd Development, LP, a Delaware limited partnership ("Live Nation"), who in accordance with Section 14-1005(5)(b) of Philadelphia Code, Chapter 14-1000 (the "Ordinance") and Section 9.2.a of the Philadelphia Historical Commission Rules & Regulations (the "Regulations") deposed and stated, to his knowledge based on the exhibits attached to this affidavit (this "Affidavit"), the materials cited in this Affidavit and upon reasonable investigation or inquiry, all those matters as set forth below in this Affidavit.

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
COUNTY OF PHILADELPHIA )

Before me, the undersigned Notary Public in and for said County and State, personally appeared Paul Safran, Esquire, Vice President and General Counsel of iPic-Gold Class Entertainment, LLC, a Delaware limited liability company ("iPic"), who in accordance with Section 14-1005(5)(b) of the Ordinance and Section 9.2.a of the Regulations deposed and stated, to his knowledge based on the exhibits attached to this Affidavit, the materials cited in this Affidavit and upon reasonable investigation or inquiry, all those matters as set forth below in this Affidavit.

**I. BACKGROUND AND CURRENT OWNERSHIP**

1. Live Nation is the legal owner of the building located at 1910 Chestnut Street, Philadelphia, Pennsylvania commonly known as the Sameric or Boyd Theater (the "Building"), identified as OPA Account No. 882043201 for real estate taxation purposes, as more particularly described by a metes and bounds legal description and depicted on that certain survey on Exhibits "A" and "B" respectively, attached hereto and made a part hereof (the "Property"). As discussed below, at the time of Live Nation's acquisition of the Property in 2005, the Property was not listed on the Philadelphia Register of Historic Places.

2. R Investment Nine, L.P., a Pennsylvania limited partnership and affiliate of International Financial Company, LLC (“IFC”), is the equitable owner of the Property pursuant to an Agreement to Purchase Real Estate dated “as of October \_\_, 2012” by and between Live Nation, as seller, and R Investment Nine, L.P., as purchaser (as subsequently amended, the “Pending Purchase Agreement”).

3. 30 West Pershing, LLC, a Missouri limited liability company and affiliate of EPR Properties, is the equitable ground lessee of the Property pursuant to a Lease by and between R Investment Nine, L.P., as landlord, and 30 West Pershing, LLC, as tenant, dated as of July 24, 2013 (the “Ground Lease”).

4. iPic is the equitable sub ground lessee of the Property pursuant to a sub ground lease by and between 30 West Pershing, LLC, as sub ground lessor, and iPic, as sub ground lessee, dated as of July 24, 2013 (the “Sub Ground Lease”).

5. As required by the Ordinance and the Regulations, this Affidavit and its exhibits demonstrate the Property cannot be used for any purpose for which it is or may be reasonably adapted because the sale of the Property is impracticable, commercial rental cannot provide a reasonable rate of return, and other potential uses of the Property are foreclosed.

## **II. HISTORY OF UNSUCCESSFUL ATTEMPTS TO ADAPTIVELY REUSE THE BUILDING AND/OR SELL THE PROPERTY**

6. The Building was constructed in 1928 as a movie theater with over 2,300 seats. Nomination of Historic Building, Structure, Site, or Object for Boyd Theater, Philadelphia Register of Historic Places, Philadelphia Historical Commission, May 28, 2008. The Building consists of two principal components: the head house facing Chestnut Street (the “Chestnut Street Wing”), and the area containing the auditorium and stagehouse on the rear portion of the block bordering Sansom Street to the south (the “Auditorium Wing”). *Id.*

7. The Chestnut Street Wing, rectangular in shape and approximately 34 feet tall, includes the primary character-defining features of the Building’s exterior: (i) a carved limestone Art Deco style façade with its decorative parapet; and (ii) patterned, frosted, and gilded glass windows and doors with geometric and floral motifs. *Id.*

8. The Auditorium Wing, rectangular in shape and perpendicular to the Chestnut Street Wing (forming an “L” shape), rises to a height of approximately 65 feet and is of a utilitarian brick design. The Auditorium Wing has little ornamentation. *Id.*

9. In an effort to boost attendance in the 1980s, then-owner Sameric Corporation of Chestnut Street, Inc. (“Sameric”) expanded the Building from its original single screen format to house three additional, smaller screens, located to the west of the original Building entrance, at 1912-1918 Chestnut Street. “Boyd to be renovated, reopened in 2006,” *Philadelphia Inquirer*, January 6, 2005 (attached hereto and made a part hereof, together with additional newspaper articles referenced in this Affidavit, as Exhibit “C”).

10. In 1986, the Philadelphia Historical Commission (the "Commission") nominated the Building for local historic designation. Sameric sought to delay the designation vote several times, including through litigation. At the eventual designation hearing, Sameric testified that many of the (largely interior) features emphasized by the Commission's Committee on Historic Designation, such as the ticket booth, entranceway floor, glass doors to the main lobby, mirrors, and the lobby ceiling, were not original, and that substantial changes to the appearance of the theater had been made over the years. *Sameric Corp. of DE, Inc. v. City of Philadelphia*, 142 F.3d 582, 587 (3d. Cir. 1998).

11. After the Commission nevertheless designated the Building on April 2, 1987, Sameric applied for a demolition permit, which the Commission refused to approve, and Sameric subsequently filed a legal challenge to the designation on April 24, 1987. The Supreme Court of Pennsylvania ultimately vacated the Building's historic designation on November 9, 1993, explaining that interior designations were not permitted by the Ordinance, and that the exterior and interior designations of the Building could not be distinguished. *United Artists' Theater Circuit, Inc. v. City of Philadelphia*, 635 A.2d 612, 535 Pa. 370 (1993).

12. In 1988, with attendance still languishing, Sameric sold the Building and 1912-1918 Chestnut Street to United Artists Realty Company ("United Artists"). "Sameric Fails In Suing the City," *Philadelphia Inquirer*, July 15, 1997; Deed dated Apr. 18, 1988 and recorded Apr. 28, 1988 in the Phila. Dep't of Records at Doc. No. 43560485.

13. In 1995, United Artists entered into an agreement with real estate developers Neal Rodin and Ralph Heller to convert the Building to retail use, but the sale never closed. "Last Show for Film Palace? Not If This Group Can Help It," *Philadelphia Inquirer*, May 24, 1995.

14. Eventually, United Artists entered into a sale-leaseback transaction with Chestnut Theater Associates, L.P. (an entity controlled by the Goldenberg Development Corporation ("Goldenberg")), on December 22, 1998 wherein: (i) Goldenberg paid \$3,270,000 for the Building and 1912-1918 Chestnut Street; (ii) United Artists leased back the properties from Goldenberg for an initial term of 15 years with renewal options allowing for an aggregate 29-year term (the "United Artists Lease"); (iii) Goldenberg granted United Artists an exclusive providing that Goldenberg could not build another movie theater within two miles of the Building during the term of the United Artists Lease; and (iv) granting United Artists a right of first refusal to repurchase the properties. Memorandum of Lease dated Dec. 22, 1998 and recorded Dec. 31, 1998 in the Phila. Dep't of Records at Doc. No. 48707680; Right of First Refusal Agreement dated Dec. 22, 1998 and recorded Dec. 31, 1998 in the Phila. Dep't of Records at Doc. No. 48707678.

15. In 2000, United Artists and related companies filed for bankruptcy. In the bankruptcy proceedings, United Artists was permitted to reject the United Artists Lease and rights granted to United Artists thereunder. *See Release and Termination of Memorandum of Lease and Release and Waiver of Right of First Refusal by and between United Artists and Goldenberg* dated Nov. 19, 2004 and recorded Dec. 1, 2004 in the Phila. Dep't of Records at Doc. No. 51067672.

16. In May of 2002, the Building closed to the public due to the lack of sufficient theater attendance and high maintenance costs. Even with the four movies theaters, the combined multiplex could not make it. It has since been continuously closed to the public. "The Sameric Theater shuts down," *Philadelphia Inquirer*, May 7, 2002.

17. After the Commission denied a new nomination for historic designation, in 2002, the Philadelphia Department of Licenses & Inspections ("L&I") granted Goldenberg's June 14, 2002 request for a permit to demolish the Building. "Sameric backers try to have demolition permit revoked," *Philadelphia Daily News*, July 30, 2002. Goldenberg stated publicly its intention was to restore the theater and use it as a multi-entertainment venue, with the demolition permit serving as an alternative in case redevelopment did not succeed. "Mayor calls for Sameric preservation," *Philadelphia Inquirer*, Aug. 1, 2002.

18. In the early 2000s, Goldenberg reportedly made several repeated attempts to secure a joint venture redevelopment partner for the theater, all without success. In the summer of 2002, Mayor John Street announced that he would support public subsidies to help defray some of the potentially prohibitive cost of rehabilitation. Apparently, no specific funding package was ever approved. "Mayor vows to help the Sameric," *Philadelphia Daily News*, Aug. 1, 2002.

19. That summer, Goldenberg reported negotiations with two potential tenants who could fulfill Goldenberg's stated desire to redevelop the Building as a site that would include live concerts, a dinner theater, and rentals for catered events. "Sameric/Boyd might be a dinner theater," *Philadelphia Daily News*, August 22, 2002.

20. In the fall of 2002, Goldenberg reportedly met with Joanna Pang and Jon Hampton, owner and talent buyer, respectively, of the Trocadero Theater at 10<sup>th</sup> and Arch Streets, to discuss joint operation of theater, while reporting negotiations with at least three other redevelopment candidates. "Trocadero looks to partner with Sameric," *Philadelphia Daily News*, November 14, 2002.

21. In March 2003, Goldenberg reportedly met with a broker representing the Pennsylvania Ballet, which expressed an interest in using the Building for offices and classrooms. However, the Pennsylvania Ballet ultimately did not move forward in the context of then-estimated theater repair costs. "Pennsylvania Ballet eyeing Sameric for classrooms, offices," *Philadelphia Daily News*, March 25, 2003.

22. In September 2003, City Commerce Director James Cuorato announced that Goldenberg had entered into a deal with Clear Channel Entertainment ("Clear Channel") to restore the Building at an estimated cost of \$33 million for use as a first run, large-scale Broadway-touring production theater and cabaret venue. The proposal called for the purchase of two adjoining properties to enlarge the site. "Plan to restore Boyd confirmed," *Philadelphia Inquirer*, September 17, 2003.

23. According to the Commerce Director and Goldenberg, the project would utilize federal historic tax credits and \$3 million in HUD 108 financing and, even then, the project had at least a \$17.5 million funding gap. The funding gap was reportedly to be filled

with requests for (i) an \$11.1 million grant from the Commonwealth of Pennsylvania's Redevelopment Assistance Capital Program, and (ii) \$6.4 million in tax increment financing ("TIF") (which would then require a change in State law to include City amusement tax and authorization from City Council and the School District of Philadelphia). Phila. City Council, Transcript of Committee on the Whole (Nov. 19, 2003).

24. At the November 19, 2003 City Council hearing on the proposed TIF financing, strong public support was voiced in favor of providing the TIF financing. Testifying as to the need for substantial public investment to adaptively reuse the Building were the City Commerce Director and representatives of the Philadelphia Industrial Development Corporation, the Friends of the Boyd, the Committee to Save the Sameric, the Preservation Alliance for Greater Philadelphia and the National Trust for Historic Preservation. Phila. City Council, Transcript of Committee on the Whole (Nov. 19, 2003).

25. At the City Council hearing, the then executive director of the Preservation Alliance, stated:

**Finding a use for this building is very difficult.** And we have been blessed with the opportunity that has come here through the participation of Clear Channel. **There are relatively few, and I am not sure there are any other, potential uses that can preserve this building** other than the proposal that's been put before you. And so the choice really is not between if we don't do this, what else will happen. The choice is, losing this building or preserving it.

*Id.* (testimony of John Gallery, Preservation Alliance) (emphasis added).

26. Even after all of the public support, City Council, the School District and the Commonwealth did not move forward with the requested public funding package. "Down, Boyd," *Philadelphia Daily News*, November 25, 2003; "Did 'Lion King' kill deal to save the Boyd?", *Philadelphia Daily News*, December 4, 2003.

27. During the fall of 2003 and into the winter of 2004, Goldenberg continued to try to raise public funds but nothing moved forward. "Fading Spaces? Philadelphia's independent theaters wonder how they'll compete with the Boyd if it's run by entertainment giant Clear Channel," *Philadelphia Weekly*, March 9, 2004.

28. By 2005, Clear Channel had reorganized its plans for the Building and announced a \$30-35 million plan to renovate the theater for concerts, films, dance performances, and traveling Broadway musicals, all purportedly without public funding save for federal historic rehabilitation tax credits. "Boyd to be renovated, reopened in 2006," *Philadelphia Inquirer*, January 6, 2005.

29. In connection with this revised plan, on March 31, 2005, Goldenberg sold the Building to Boyd Development, LP, a subsidiary of Clear Channel that would soon be owned by Live Nation, an entity created in 2005 as a spin-off of Clear Channel's entertainment division. As part of this sale, the three smaller theaters to the west of the Building were separated from the

Building and replaced by a retail use then-controlled by Goldenberg. Additionally, neighboring parcels and easements were acquired to allow for the adaptive re-use of the Building. The aggregate purchase price for the three parcels which now comprise the Property was \$7,987,825 plus transfer tax and other closing costs.

30. Live Nation's initial scope of work called for conversion of the Building into a 2,140 seat theater capable of housing large Broadway musicals such as "The Lion King" or "Wicked". This program required a much larger stagehouse than the Building's existing stage and also required a much larger backstage with more dressing rooms. To achieve this, the scope of work included the demolition of the Building from the proscenium to the rear (western) portion of the Building, as well as a portion of the auditorium floor. The scope of work also included the construction of a new stagehouse that extended almost to the rear property line along Sansom Street, along with a new loading dock. All of the work on the public spaces and the front façade was to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties, and all existing systems, including HVAC, electrical, plumbing, and life safety, would have been replaced. Live Nation obtained the necessary City permits for the Broadway-type venue proposal.

31. After the acquisition, however, Live Nation sold off its entire theatrical division and could no longer justify the incredible cost of a new Broadway-type venue and began to consider other options. Before terminating the project, total project costs (hard and soft) ballooned to nearly \$47.9 million. Live Nation obtained construction cost bids based upon City-permitted construction drawings from (i) L.F. Driscoll at \$34.1 million, and (ii) a joint venture of Suffolk Construction and Intech Construction at \$31.4 million. A copy of a comparison chart of the two bids is attached hereto as Exhibit "D" and made a part hereof.

32. In 2006, Live Nation began in earnest to actively market the Property for sale. In the fourth quarter of 2006, Live Nation listed the Property nationally through CB Richard Ellis ("CBRE"). The listing agreement did not contain a listing price. CBRE actively solicited interest from the development and real estate community and targeted investors. After over a year of active marketing, however, CBRE found no appreciable interest in the Property.

33. Thereafter, in May 2008, Live Nation opted to initiate its own request for proposals process to attempt to find a purchaser for the Property (the "2008 RFP") – a purchaser who would rehabilitate the historic theater. The Preservation Alliance actively worked with Live Nation to help identify potential purchasers. Writing about the effort, the then-executive director of the Preservation Alliance opined in a December 17, 2008 letter to the Philadelphia Zoning Board of Adjustment that:

In the first half of 2008, the Preservation Alliance worked diligently to find a developer willing to purchase the theater from Live Nation, the current owner, who would agree to fully rehabilitate the historic building. **We found no developers who felt that rehabilitation of the theater building on its own was financially feasible** and, as far as we know, Live Nation did not receive any viable proposals of this nature in response to its RFP to developers.

A copy of the letter is attached hereto as Exhibit "E" and made a part hereof (emphasis added).

34. The 2008 RFP proposed a sales price range of \$6.7 to \$7.3 million, and a seven year restriction that no portion of the Building could be used for the purpose of presenting live entertainment music concerts (except theatrical performances and comedy acts were permitted). Live Nation required that bidders submit plans for preservation and/or restoration of the historical character of the Building, as well as evidence of financial ability to complete and fund the transaction. The 2008 RFP also provided contact information for the Preservation Alliance and the National Trust for Historic Preservation as "entities which have expressed a desire to assist with the potential development of the Property in a manner to maintain and preserve the historical character of the Property." A copy of the 2008 RFP is attached hereto as Exhibit "F" and made a part hereof.

35. The 2008 RFP was sent to the following group of developers, theatrical users and interested parties:

1. Michael Gallagher – The Flynn Company – Developer
2. Aaron Cohen – Pole March Holdings – Developer
3. Stene Gartner – Metro Commercial Real Estate – Developer
4. John Gallery – Preservation Alliance – Historic Preservation Group
5. Peter Brink – National Trust for Historic Preservation – Historic Preservation Group
6. James Pearlstein and Reed Slogoff – Pearl Properties – Developer
7. John DiPietro – The Talon Group – Developer
8. Joe Zuritsky – Parkway Corp. – Developer
9. Michael Lawry – The Goldenberg Group – Developer
10. Ken Mallin – MPN Realty – Developer/Agent
11. Hal Wheeler – ARC Wheeler – Developer
12. Hal Roseman – Rose Tours & Travel – Agent
13. Karen Randal – City of Philadelphia Dept. of Commerce
14. David Anderson – Broadway Across America/ACE Theatrical – Theatrical Developer/Operator
15. Gary Markowitz – Golden Eye - Theatrical Developer/Operator
16. Charley Moss – Bowtie Partners - Entertainment Developer/Operator
17. Andrew Feltz – JAB II LLC – Entertainment Developer/Operator

36. Hal Wheeler of ARC Wheeler LLC ("Wheeler") was the only party to submit a written bid in response to the 2008 RFP agreeing to the basic terms of the 2008 RFP. In August 2008, Wheeler signed an agreement with Live Nation to purchase the Building for \$6.8 million. The Wheeler development proposal involved a 250-room, 28-story hotel addition to the Building and the rehabilitation of the Building as a theater for live entertainment, films and conference space. The proposal would also remove nearly 2,000 square feet of the Building's stagehouse. Wheeler planned to have the Kimpton Hotel & Restaurant Group manage the hotel functions. Additionally, Live Nation agreed to enter into a seven-year booking arrangement with Wheeler for up to 60 live entertainment shows per year. Total cost estimates for the project ranged from \$95 million to \$135 million. "Boyd Theater developer envisions entertainment complex," *Philadelphia Inquirer*, September 10, 2008; "Boyd theater becomes victim," *Philadelphia Business Journal*, July 22, 2011.

37. Over three years after Live Nation's acquisition the Property, the Preservation Alliance re-nominated the Building for historic designation in May 2008. Thereafter, the Commission designated the exterior of the Building as historic on August 8, 2008.

38. On November 14, 2008, the Commission approved the Wheeler hotel proposal, including the removal of the stagehouse and the western wall of the Auditorium Wing, as an alteration to the newly historically-designated Building. The Commission determined that the western wall of the Auditorium Wing was not a "character-defining feature" of the Building, and therefore removal of the stagehouse would be an "alteration," and not a "demolition" under the Ordinance. A copy of the Historical Commission's approval letter is attached hereto as Exhibit "G".

39. Thereafter, the Philadelphia Zoning Board of Adjustment granted variance relief for the Wheeler hotel proposal in December 2008.

40. Nevertheless, even with the additional potential income from a 28-story hotel and related operations, the Wheeler proposal needed substantial government assistance on top of available federal tax credits. Wheeler sought upward of \$15 million in grant funds from the Commonwealth's Redevelopment Assistance Capital Program. Wheeler spent nearly two years trying to obtain the release of these funds from the Commonwealth. Wheeler obtained letters of support for the grant funds from Congressman Bob Brady, the Greater Philadelphia Film Office, Preservation Pennsylvania, the Center City Proprietors Association, the Preservation Alliance, AIA Philadelphia, The National Trust for Historic Preservation, Friends of the Boyd, the Philadelphia Building Trades Council, the Philadelphia Convention & Visitors Bureau, Rittenhouse Row, Councilman Darrell Clarke, Greater Philadelphia Tourism Marketing Corporation, the Theater Historical Society of America and State Representative Babette Josephs. Copies of these letters are attached hereto as Exhibit "H".

41. Notwithstanding Mr. Wheeler's and other's substantial efforts (including efforts of the Preservation Alliance and the Friends of the Boyd), only \$1 million in Commonwealth matching grant funds were eventually released – well short of what was required.

42. Although Wheeler initially agreed to purchase the Property by late November 2008, the agreement was amended five times due to Wheeler's continued need to attract public funding. In 2009, Live Nation reserved the right to actively market the Property to third parties and enter into another agreement of sale (with a preferential purchase right to Wheeler), and eventually the closing deadline was extended until April 2010. Sadly, prior to the closing deadline, Mr. Wheeler passed away; resulting in the termination of the agreement.

43. After Wheeler's death, Live Nation continued to reach out to major U.S. theatrical developers and operators to gauge interest in purchasing the Building for use a theatrical performing arts venue. Unfortunately, the high cost of development made the project unappealing to these parties.

44. Additionally in 2010, Live Nation subsequently explored the feasibility of converting the Building into a 2,200 capacity standing general admission live entertainment venue capable of housing touring live music acts under Live Nation's "Fillmore" brand. Again, Live Nation could not justify the rehabilitation costs in light of project revenues.

45. Nevertheless, Live Nation continued to attempt to sell the Property. In January of 2011, Live Nation entered into an agreement with 1910 Chestnut LP to purchase the property for \$5 million, but with Live Nation providing \$2.5 million in seller financing. The development plan called for either a hotel, theater, or condominiums, or some combination of each use. However, the developer was unable to finalize the development plans and secure investment partners, and the agreement was eventually terminated.

46. In April of 2011, Live Nation entered into a similar agreement with R Investment Four LP, an entity owned by IFC. Again, the purchase price was \$5 million, with Live Nation providing \$2.5 million in seller financing. IFC was, however, unable to finalize its development plans and confirm its end users, and the contract was terminated.

47. In October of 2012, Live Nation entered into a new agreement with IFC (operating as R Investment Nine LP) for the sale of the Building for \$4.5 million. This is the Pending Purchase Agreement.

48. Since the closing of the Sameric in May 2002, there has been a steady, continuous and good faith effort to either adaptively reuse the Building or find a purchaser who would do so. In addition, despite public outcry for public funds to restore the Building, the funds have not been made available and the numerous proposals have not come to fruition.

49. The foregoing has been corroborated in conclusions drawn by the then-executive director of the Preservation Alliance in a December 17, 2008 letter to the ZBA:

**The costs of rehabilitation greatly exceed the income that could be produced through the operation of the theater on its own.** Thus, the theater itself, while an important historic building, presents a hardship to the development of the Boyd Theater site as a whole.

Exhibit "E" (emphasis added).

### III. APPRAISALS AND CITY REAL ESTATE ASSESSMENTS

50. Live Nation has had the Property appraised twice. The first appraisal was prepared by CBRE in January 2007 and valued the Property at \$6.8 million. A copy of the January 2007 CBRE appraisal is attached hereto as Exhibit "I" and made a part hereof. The second appraisal was also prepared by CBRE in April 2008 and valued the Property at \$6.6 million. A copy of the April 2008 CBRE appraisal is attached hereto as Exhibit "J" and made a part hereof.

51. Both appraisals affirmatively concluded that “[t]he analysis indicates that the current improvements [*i.e.* the Building] do not represent an economically viable use of the subject site and that demolition of the improvements is necessary in order to place that land to its highest and best use.”

52. We understand that an appraisal may have been obtained by Wheeler in connection with efforts to obtain financing for the hotel proposal, but we do not have a copy.

53. For 2013, the Philadelphia Office of Property Assessment (the “OPA”) has assigned an implied fair market value of \$2,303,000. A copy of the OPA’s print-out for the Property is attached hereto as Exhibit “K” and made a part hereof.

54. For 2014, the OPA has assigned a proposed assessment of \$11,413,700 for the Property. *See* Exhibit “K”.

#### IV. FINANCIAL STATEMENTS

55. Unaudited financial statements for 2010-2012 are attached hereto as Exhibit “L” and made a part hereof. Live Nation has not taken any federal tax depreciation for the Property.

56. For that period, the Property continued to have no positive cash flow while Live Nation continued to incur hundreds of thousands of dollars of fixed operating expenses for the Property.

#### V. THE PHYSICAL CONDITION OF THE BUILDING

57. Since the closing of the Building in 2002 and Live Nation’s pre-construction efforts in 2005 and 2006, the condition of the Building has continued to deteriorate.

58. On September 8, 2013, Alderson Engineering, Inc. issued a Mechanical, Electrical, Plumbing and Fire Protection Existing Conditions Report prepared by Travis Alderson, P.E., LEED AP for the Property (the “the Alderson Report”). The Alderson Report is attached hereto as Exhibit “M” and made a part hereof.

59. Regarding the Building’s existing heating, ventilation and air conditioning systems, the Alderson Report concludes that they are in “**VERY POOR** condition and are not operational” and that “[t]otal system replacement would be needed to occupy the building in the future.”

60. Regarding the Building’s existing power distribution, lighting and life safety systems, the Alderson Report concludes that they are in “**VERY POOR** condition and are not operational” and that “[t]otal system replacement would be needed to occupy the building in the future.”

61. Regarding the Building's domestic water and sanitary systems, the Alderson Report concludes that they are in "**VERY POOR** condition and are not operational" and that "[t]otal system replacement would be needed to occupy the building in the future."

62. Regarding the Building's sprinkler systems, the Alderson Report concludes that they are in "**VERY POOR** condition and are not operational" and that "[t]otal system replacement would be needed to occupy the building in the future."

63. On September 6, 2013, The Harman Group issued a Structural Condition Assessment prepared by Janis B. Vacca, P.E., LEED AP for the Property (the "Harman Report"). The Harman Report is attached hereto as Exhibit "N" and made a part hereof.

64. Although the Harman Report concludes that most of the structural framing of the Building is in good condition, it observes that "[w]ater is leaking through the auditorium roof at a number of locations . . . . The leaks have damaged ceilings, plaster walls and other architectural finishes . . . . Deterioration of the roof slab has occurred . . . as evidenced by spalling concrete and corrosion of reinforcing steel. Rainwater is corroding one of the balcony support columns on the south side of the auditorium." Water penetration is also occurring through significant cracks in the Building's exterior brickwork.

65. Moreover, the Harman Report documents severe damage to the wood-framed stage floor.

## VI. EVALUATION OF REASONABLE USES OR REUSES OF THE PROPERTY

66. Attached hereto as Exhibit "O" is a report prepared by EConsult Solutions, Inc. (the "EConsult Report") demonstrating that other potential uses of the Property are foreclosed. The EConsult Report analyzes the economic feasibility of three alternative potential uses of the Property: (i) a Broadway style theater, (ii) a multipurpose live entertainment venue, and (iii) a single screen movie theater. The EConsult Report concludes that each scheme would result in a negative return on investment for the Property owner.

67. The EConsult Report references three construction cost estimates issued by INTECH Construction ("INTECH") on September 9, 2013, attached hereto as Exhibit "P". The INTECH cost estimates are based on: (i) a 2005 Live Nation cost estimate for an off-Broadway style theater (refer to INTECH cost estimate, "Scenario 2 Off Broadway Theatre w/Flytower"), (ii) a 2010 Live Nation cost estimate for a multipurpose live entertainment venue (refer to "Scenario 3 Live Venue w/out Flytower" cost estimate) that was based on the 2005 cost estimate with certain modifications to the theater design, and (iii) INTECH's 2013 cost estimate for a single screen movie theater (refer to "Single Movie Theater" cost estimate) that is based on the 2005 cost estimate with certain modifications to the theater design. Each cost estimate includes cost escalations to the present day in order to adjust for inflation.

68. As described in the EConsult Report, redeveloping the Property as a Broadway style theater would require installation of an intensive theatrical rigging system (a "fly tower") in addition to a complete overhaul of the Building's mechanical systems. The total

construction investment needed to prepare the Building for this use would be approximately \$37.6 million, and the total expenditures needed to develop the Building for this use would amount to \$53.3 million. Based on a detailed review of comparable performance venues in Philadelphia, the EConsult Report estimates that this redevelopment scenario, with a first year operating cash flow of less than \$700,000, would yield a net present value of negative \$9.5 million and a negative return on investment. According to the report, if the analysis more realistically assumed that the Building would realize only 80 percent of the success of the Kimmel Center, then the net present value would be closer to negative \$18.1 million and the first year cash flow would be approximately negative \$0.3 million. The EConsult Report concludes that "[t]he expense of renovating and adapting the Boyd for use as a Broadway style theater would face insurmountable financial challenges. The cost of renovating the theater is greater than can be justified by profits made by the operation of the theater."

69. The EConsult Report finds that although redeveloping the Property as a multipurpose live entertainment venue capable of hosting live music acts would not require the construction of a fly tower, the prohibitive rehabilitation costs would result in a total construction investment of approximately \$29.1 million, with total expenditures of \$42.9 million. Based on a detailed review of comparable performance venues in Philadelphia, the EConsult Report estimates that this redevelopment scenario, with a first year operating cash flow of approximately negative \$0.8 million, would yield a net present value of negative \$19.9 million and a negative return on investment. The EConsult Report concludes that "[t]he expense of renovating and adapting the Boyd for use as a live performance venue would face insurmountable financial challenges. The cost of renovating the theater is greater than can be justified by profits made by the operation of the theater."

70. The EConsult Report further finds that due to the recent lack of demand for movie theaters given the advent of new digital video technologies, the operating inefficiencies associated with single screen movie offerings that make staggered show times impossible, and the Building's prohibitive rehabilitation costs, redeveloping the Property as a single screen movie theater would result in a total construction investment of approximately \$27.8 million, with total expenditures of \$41.4 million. Based on a detailed review of comparable movie theaters around the U.S., the EConsult Report estimates that this redevelopment scenario, with a first year operating cash flow of approximately negative \$1.5 million, would yield a net present value of negative \$25 million and a negative return on investment. The EConsult Report concludes that "[t]he expense of renovating the Boyd for use as a single screen movie theater would face insurmountable financial challenges. The cost of renovating the theater is greater than can be justified by profits made from the operation of the theater."

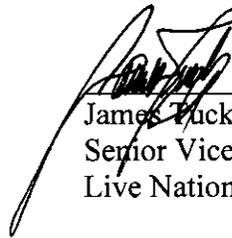
71. The EConsult Report ends by stating that "[w]e conclude that there is no use to which the Boyd Theater may be reasonably adapted given the cost of renovations and the revenues that can be expected by those uses."

72. The appendices to the EConsult Report include a ten-year pro forma of projected revenues and expenses for the evaluated alternative uses, taking into consideration the utilization of tax incentives and other incentives.

VII. CONCLUSION

73. Over the course of two decades, the Building's owners have entered negotiations with many potential developers and purchasers and have developed numerous redevelopment schemes for the Building. However, every attempt to redevelop the Building has failed, due to the prohibitive costs of rehabilitation, the lack of sufficient revenue generated from a live performance or single screen movie theater scheme, and the inability to secure the large amounts of public funding necessary to render a redevelopment plan economically feasible to end users. Consequently, as demonstrated by this Affidavit and the exhibits attached hereto, the Property cannot be used for any purpose for which it is or may be reasonably adapted because the sale of the Property is impracticable, commercial rental of the Property cannot provide a reasonable rate of return, and other potential uses of the Property are foreclosed.

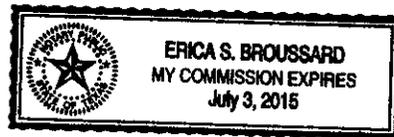
Further, your deponent saith not.



James Tucker, Esquire  
Senior Vice President Legal Affairs  
Live Nation Worldwide, Inc.

Sworn to and subscribed before me  
this 21<sup>st</sup> day of September, 2013.

  
Notary Public



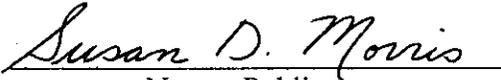
Further, your deponent saith not.



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Paul Safran, Esquire  
Vice President and General Counsel  
iPic-Gold Class Entertainment, LLC

Sworn to and subscribed before me  
this 30<sup>th</sup> day of September, 2013.

  
Notary Public

