

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND  
THE AURORA CIVIC CENTER AUTHORITY RELATING TO CERTAIN CAPITAL  
IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT (this “AGREEMENT”) dated \_\_\_\_\_, 2020 is between the CITY of Aurora, an Illinois municipality and home rule unit of government (hereinafter referred to as the “CITY”) and the Aurora Civic Center Authority, a municipal corporation organized under the Illinois Civic Center Act (hereinafter referred to as “Civic Center”) for the construction of certain capital improvements for the mutual benefit of both parties (singular “Party” and collectively “Parties”).

WHEREAS, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) authorizes units of local government in Illinois to exercise jointly with any other public agency within the state, including other units of local government, any power, privilege, or authority which may be exercised by a unit of local government individually and to enter into intergovernmental Agreements for the performance of governmental services, activities and undertakings; and

WHEREAS, Article Seven, Section Ten of the Constitution of the State of Illinois, 1970, authorize units of local government, including Civic Center Authorities and municipalities, to enter into intergovernmental Agreements to exercise, combine or transfer power or functions not prohibited to them by law ordinance; and

WHEREAS, the Civic Center is expressly authorized under the Civic Center Act (70 ILCS 200/10-15 a-c) to enter into intergovernmental Agreements; and

WHEREAS, the Civic Center owns and controls a portion of the walkway called the “Promenade” to the east of the Civic Center’s Paramount Arts Centre, between Downer Place and Galena Boulevard. The Promenade extends above the east branch of the Fox River; and

WHEREAS, the Promenade has been subject to serious deterioration and needs to be repaired (“Promenade Improvements”); and,

WHEREAS, the Civic Center owns and operates an office building, theater, and banquet facility called the “North Island Center” (“NIC”) which has a plaza (“NIC Plaza”) in front of the building that is in need of repair and reconstruction (“NIC Plaza Improvements”); and

WHEREAS, the Parties for convenience will refer to the Promenade Improvements and NIC Plaza Improvements collectively as the “Projects”; and,

WHEREAS, the CITY and the Civic Center have been able to obtain funds for these Projects from the State of Illinois as part of the 2019 Capital Bill (“State Funds”), which funds have been earmarked for the Promenade Improvements and the NIC Plaza Improvements; and,

WHEREAS, these State Funds must be expended within six months after the grants are awarded or at such additional time as necessary to reasonably complete the improvements; and,

WHEREAS, the Parties want to cooperate to complete the Projects in a timely manner.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are material to this Agreement and are incorporated herein as though set forth in their entirety in this Paragraph
2. Riverwalk Commission Approval. The Parties acknowledge that the CITY’s Riverwalk Commission has a review function with regard to the Promenade Improvements. The Civic Center will take all necessary steps to obtain such approval, with the cooperation of the CITY.
3. Administration of State Funds. The CITY agrees to facilitate the receipt of the State Funds for the NIC Plaza and transmit monies to the Civic Center in a timely manner to cover

certain costs of the NIC Plaza Improvements, including construction costs. In particular, the Civic Center has been allocated \$725,000 for the Promenade Improvements and \$225,000 for the Plaza Improvements. The scope of the Promenade Improvements is set out in Exhibit A and the scope of the NIC Plaza Improvements is set out in Exhibit B.

4. Engineering for the Promenade Improvements. The Parties acknowledge that the CITY hired HR Green, Inc. to do preliminary plans for the Promenade Improvements and the CITY intends to finalize plans by using the services of HR Green. The Civic Center understands that the State Funds for the Promenade Improvements will include monies to reimburse the CITY for all engineering costs incurred by the City. For this reason, the CITY is front funding these costs and expecting to be reimbursed by the Civic Center. The Civic Center agrees to reimburse the City for such engineering expenses out of its \$725,000 grant.

5. Construction of the Promenade Improvements. The Civic Center will contract for and supervise the construction of the Promenade Improvements. To the extent required, the CITY will inspect these improvements and provide staff support to assist with supervision of such improvements.

6. Construction of the NIC Plaza. The Civic Center will be solely responsible for the engineering and construction of the NIC Plaza Improvements. The CITY will forward the funds approved for this work from the State Funds. To the extent required, the CITY will inspect these improvements.

7. Default. In the event of a material default by a Party, the affected Party shall give notice of the default to the defaulting Party and the defaulting Party shall have 30 days to cure the default or such additional time as is reasonably necessary to cure the default. If the default is not cured, the affected Party shall have the right to terminate this Agreement.

8. Insurance.

(a) ACCA agrees to furnish (or cause to be furnished) insurance as follows:

i. *Commercial General Liability Insurance.* ACCA shall furnish evidence that carries Commercial General Liability Insurance containing broad form contractual liability providing for a limit of not less than One Million Dollar (\$1,000,000.00) single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person or destruction of property, including the loss of use thereof, in any one occurrence under the terms of which CITY is named as an additional insured; with an umbrellas of not less than Eight Million Dollars (\$8,000,000.00) for all damages occurring as a result of more than one occurrence. Coverage must include coverage for fire legal liability and products and completed operations. ACCA will require any contractors or subcontractors working on the Projects to have similar coverage with a Two Million Dollars (\$2,000,000.00) single limit and Four Million Dollars (\$4,000,000.00) combined limit.

ii. *Workers' Compensation Insurance.* ACCA shall furnish evidence that, with respect to the operations it performs, it carries a workers' compensation insurance policy complying with the statutes of the State of Illinois covering all employees of ACCA. Each such policy shall contain employers liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) each accident; One Hundred Thousand Dollars (\$100,000.00) each employee disease; and Five Hundred Thousand Dollars (\$500,000.00) policy limit-disease. ACCA will require any contractors or subcontractors working on the Projects to have similar coverage.

iii. *Insurance Ratings.* All insurance obtained by ACCA, its contractors, or subcontractors shall be with a minimum Best's rating of A- / VII or better. ACCA'S failure to

obtain proper insurance coverage or to insure the CITY as additional insured shall not, at any time, operate as a waiver of the CITY Indemnified Parties' right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this AGREEMENT.

(b) The CITY acknowledges that it carries adequate insurance either through self-insurance or insurance policies to cover general liability and worker's compensation with regard to its actions related to the Projects.

9. Indemnities.

(a) ACCA'S Indemnification of CITY.

i. Scope of Indemnity. To the fullest extent permitted by law, ACCA agrees to defend and indemnify the CITY and its administrators, officers, employees, agents, successors, assigns, contractors, subcontractors, consultants and all other persons, firms and corporations acting on their behalf or with their authority (collectively, the "CITY Indemnified Parties" or each a "CITY Indemnified Party") against any claims, suits, actions or proceedings filed against any of them arising out of or with respect to ACCA's construction of the Projects, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; provided, however, that the CITY Indemnified Party or Parties, as applicable, seeking indemnification hereunder may elect to participate in the defense thereof at their own expense or may, at their own expense, employ attorneys of their own selection to appear and defend the same on their behalf.

ii. ACCA's waiver of rights.

1. To the fullest extent permitted by law, ACCA, its successors and/or assigns, hereby assumes and agrees to acquit and waive any rights which ACCA may

have against and forever discharge the CITY Indemnified Parties from and against any and all any personal injuries and property damage arising out of all civil liabilities, actions, responsibilities, obligations, losses, damages and claims, and all costs and expenses, including, but not limited to, attorney's fees and expenses (collectively, "Losses") pursuant to any federal, state and local laws (including the common law), statutes, ordinances, rules, regulations and other requirements relating to or which the CITY Indemnified Parties may incur from or on account of ACCA'S construction of the Projects including, but not limited to, any Losses incurred which are based on tort law, wrongful death and/or a personal injury claim, suit or action, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future, and in any manner whatsoever incurred by reason of ACCA'S construction of the Projects.

2. ACCA and its successors and assigns hereby agree to release, waive, covenant not to sue and forever discharge the CITY Indemnified Parties, and each of them, for any claim, suit or action, whether or not well founded in fact or in law, which ACCA and the ACCA Indemnified Parties have, or may have, arising out of ACCA'S construction of the Projects.

3. Nothing in this waiver shall relieve the CITY from responsibility for the negligent acts or willful misconduct by CITY employees or agents of the CITY.

4. Notice of Indemnity Claim. The CITY agrees to notify ACCA in writing within a reasonable time of any claim of which it becomes aware which may fall within these indemnity provisions.

5. Compromise of Claim. ACCA shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of the CITY Indemnified Parties, which consent shall not be unreasonably withheld or delayed. .

(b) CITY'S Indemnification of ACCA.

i. Scope of Indemnity. To the fullest extent permitted by law, the CITY agrees to defend and indemnify ACCA and its officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority (collectively, the "ACCA Indemnified Parties" or each a "ACCA Indemnified Party") from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property arising out of or occurring as a direct result of the CITY'S negligent or willful actions and resulting solely from the CITY'S or its AGREEMENT or actions in relation to the Projects.

(c) Notice of Indemnity Claim. ACCA agrees to notify the CITY in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision.

(d) Compromise of Claim. The CITY shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of ACCA and the ACCA Indemnified Parties, if applicable, which consent shall not be unreasonably withheld or delayed.

10. Notices. Each Notice ("Notice") provided for under this Agreement must comply with the requirements of this paragraph. Each Notice shall be in writing and sent by (a) depositing it with the United States Postal Service, certified mail, return receipt requested, with adequate postage prepaid, or (b) reputable overnight courier, or (c) hand delivery, addressed to the appropriate Party (and marked to a particular

individual's attention if so indicated) as hereinafter provided, or, (d) electronic mail, if an e-mail address is provided for such party below. Each Notice shall be effective upon delivery. The addresses of the Parties shall be those set forth as follows:

If to Civic Center:       Aurora Civic Center Authority  
                                  8 E. Galena Blvd.  
                                  Suite 230  
                                  Aurora, IL 60506  
                                  Attn: Tim Rater  
                                  Email: timr@paramountarts.com

with a copy to:           Dykema Gossett, PLLC  
                                  2300 Cabot Drive, Suite 505  
                                  Lisle, IL 60532  
                                  Attn: Bruce Goldsmith  
                                  Fax: 855-261-8765  
                                  Email: bgoldsmith@dykema.com

If to the CITY of Aurora: The CITY of Aurora  
                                  The CITY of Aurora Law Department  
                                  44 E. Downer Place  
                                  Aurora, IL 60507

11.     Time of Essence. Time is of the essence of this Agreement.
12.     Entire Agreement. This Agreement constitutes the entire Agreement of the Parties and may not be amended except by written instrument executed by the Parties. Exhibits identified to be included in this Agreement, whether attached hereto or later delivered, shall be incorporated by reference as part of this Agreement .
13.     Interpretation. The paragraph headings are inserted for convenience only and are in no way intended to interpret, define, or limit the scope or content of this Agreement or any provision hereof. If any Party is made up of more than one person or entity, then all such persons and entities shall be included jointly and severally, even though the defined term for such Party is used in the singular in this Agreement . If any right of approval or consent by a Party is provided for in this Agreement, the Party shall exercise the right promptly, in good faith and reasonably, unless this Agreement expressly gives such Party the right to use its sole discretion. If any time period under this AGREEMENT ends on a day other than a Business Day (as



hereinafter defined), then the time period shall be extended until the next Business Day. The term “**Business Day**” shall mean Monday through Friday excluding holidays recognized by the state government of the State in which the property is located. This AGREEMENT has been negotiated by the Parties with legal counsel of their own choosing and the interpretation of this AGREEMENT shall not give preference to the non-drafting Party.

14. Applicable Law. This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of Illinois. This AGREEMENT shall be interpreted liberally to effect the intention of the Parties.

15. Attorneys’ Fees. Each Party shall be responsible for its own attorneys’ fees in connection with this AGREEMENT and in any action to enforce this AGREEMENT each Party shall bear its own legal fees.

16. Counterparts. This AGREEMENT may be executed in two (2) counterparts, each of which shall be an original and each of which shall constitute but one and the same AGREEMENT.

17. Severability. If any provision of this AGREEMENT, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this AGREEMENT shall be construed as if such invalid part was never included herein, and this AGREEMENT shall be and remain valid and enforceable to the fullest extent permitted by law.

18. Third Party Beneficiaries. Nothing in this AGREEMENT, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this AGREEMENT on any other person other than the CITY and ACCA, or is anything in this AGREEMENT intended to relieve or discharge the obligations or liabilities of any third persons to either the CITY or ACCA, nor shall any provision give any third parties any rights of subrogation or actions over or against either the CITY or ACCA. This AGREEMENT is not intended to and does not create any third party beneficiary rights whatsoever.

19. Waivers. Either Party to this AGREEMENT may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this AGREEMENT.

20. Cooperation. The CITY and ACCA each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such Agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the CITY or ACCA or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this AGREEMENT.

21. No Joint Venture. Nothing in this AGREEMENT, or any actions of the Parties to this AGREEMENT, shall be construed by the Parties or any third persons to create the relationship of a partnership, agency or joint venture between the Parties.

22. Limitation of Liability Regarding Governmental Officials. No covenant or Agreement contained in this AGREEMENT shall be deemed to be the covenant or Agreement of the corporate authorities, any elected official, officer, partner, member, director, agent, employee or attorney of the CITY or ACCA, or her/his individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the CITY or ACCA shall be liable personally under this AGREEMENT or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this AGREEMENT, or any failure in that connection.

23. Time of Performance. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next Business Day.

24. Authority to Execute. The Parties represent and warrant that the individuals executing this AGREEMENT on their behalf have been duly authorized to do so and that all necessary actions, authorizations, resolutions, and approvals have been secured prior to the Effective Date and delivery of this AGREEMENT.

Executed By:

THE CITY OF AURORA:

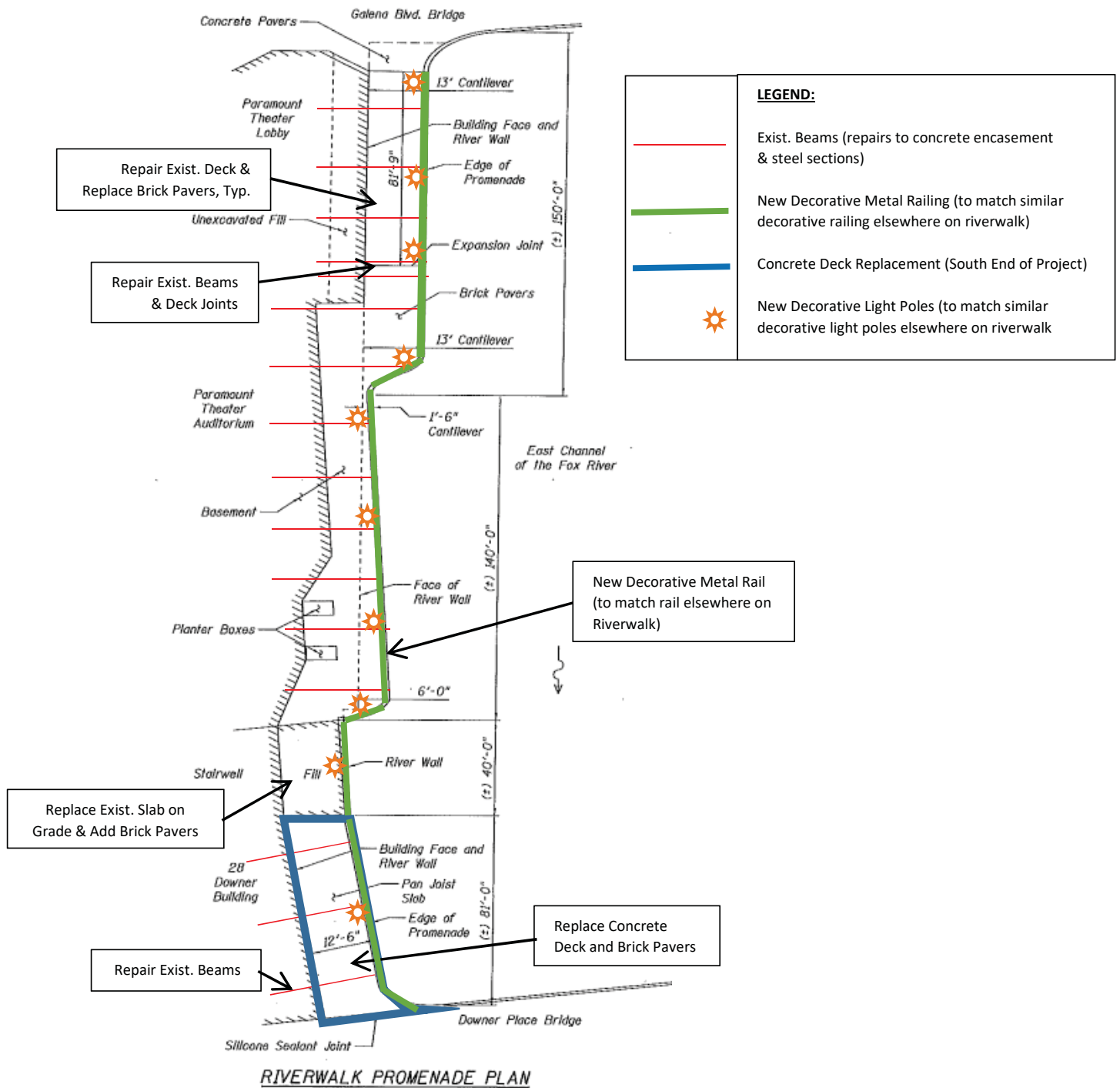
By: \_\_\_\_\_  
Mayor Richard C. Irvin

Attest: \_\_\_\_\_  
CITY Clerk

THE AURORA CIVIC CENTER:

By: \_\_\_\_\_  
Tim Rater, President and CEO

Attest: \_\_\_\_\_  
Vice President



# EXHIBIT A CITY OF AURORA, RIVERWALK

By: JMW  
Date: 03/30/20



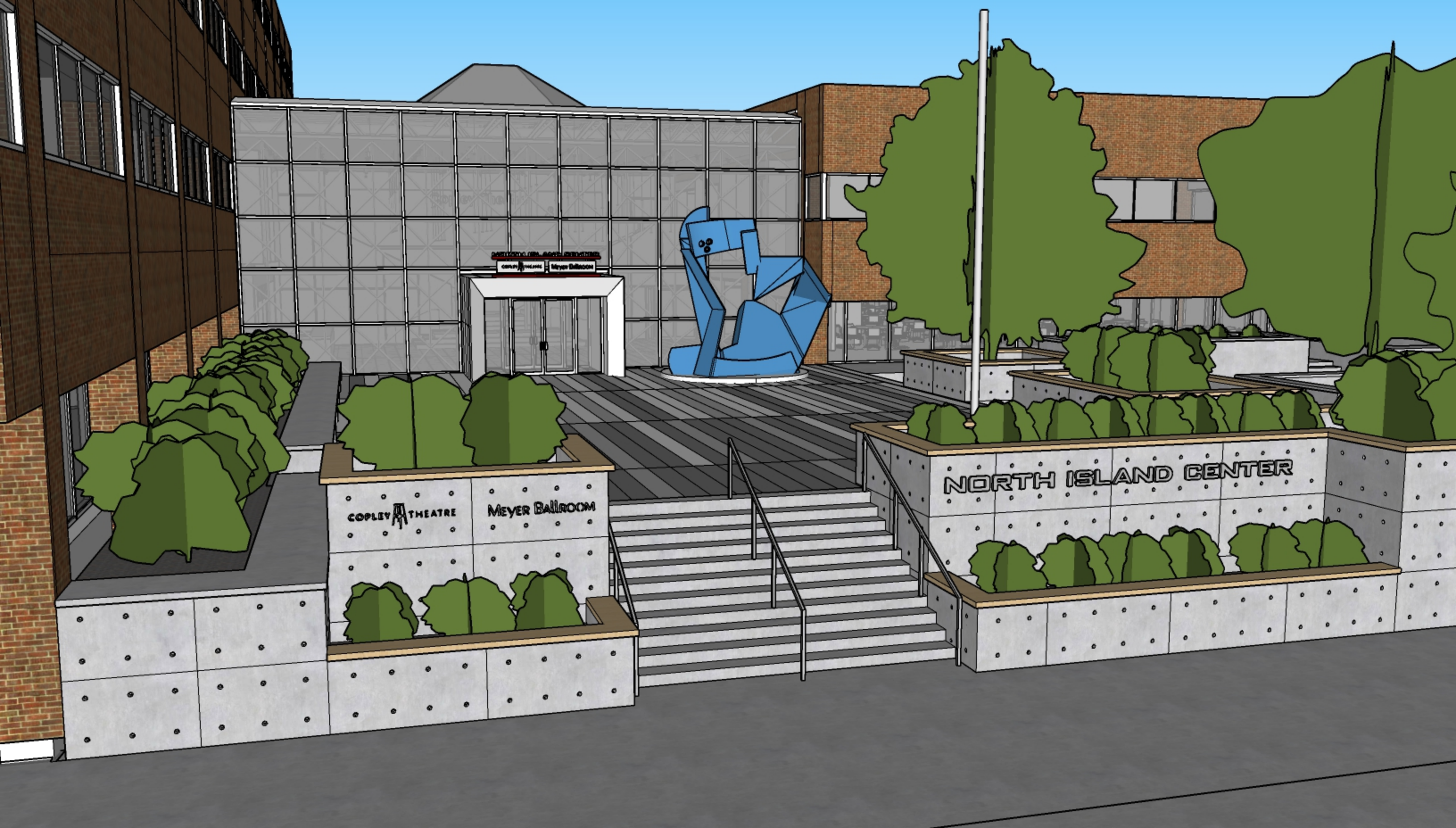
# **EXHIBIT B**











DAVIDSON A. BOWEN CENTER  
COPLEY THEATRE Meyer Ballroom

COPLEY THEATRE

MEYER BALLROOM

NORTH ISLAND CENTER





COMEDY THEATRE

Meyer Evenson

NORTH ISLAND CENTER