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This Document Prepared by  
and after Recording Return to:

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Elizabeth F. Weber, Esq.



Doc#: 0513127130  
Eugene "Gene" Moore Fee: \$92.00  
Cook County Recorder of Deeds  
Date: 05/11/2005 04:00 PM Pg: 1 of 35

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## ASSIGNMENT OF RENTS, LEASES AND THEATER RENTAL AGREEMENTS

**THIS ASSIGNMENT OF RENTS, LEASES AND THEATER RENTAL AGREEMENTS** ("Assignment") is made and delivered as of the 1st day of March, 2005, by **MUSIC AND DANCE THEATER CHICAGO, INC.**, an Illinois not-for-profit corporation formerly known as Chicago Music and Dance Theater and d/b/a Music and Dance Theater Chicago ("Assignor"), to and for the benefit of **BANK OF AMERICA, N.A.**, a national banking association, its successors and assigns ("Assignee").

### RECITALS:

A. Pursuant to that certain Ground Lease dated as of February 1, 2002 made by and among the City of Chicago, as ground lessor, and Assignor, as ground lessee, a memorandum of which was recorded February 11, 2002 as document number 0020169342 (the "Ground Lease"), Assignor has a leasehold interest in the land located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof and all buildings and other improvements located therein (said land and improvements being hereinafter referred to collectively as the "Premises") for a term of ninety-nine (99) years.

B. Pursuant to the terms and conditions of a Reimbursement Agreement of even date herewith (as amended, restated or replaced from time to time "Reimbursement Agreement") between Assignor and Assignee, Assignee has agreed to issue an irrevocable, transferable letter of credit (the "Letter of Credit") in an initial stated amount equal to \$20,191,781 for the benefit of Assignor to secure \$20,000,000 aggregate principal amount of Illinois Finance Authority Adjustable Demand Revenue Bonds, Series 2005 (Joan W. and Irving B. Harris Theater for Music and Dance Project) (the "Bonds").

C. A condition precedent to Assignee's issuance of the Letter of Credit is the execution and delivery by Assignor of this Assignment.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

Near North National Title  
222 N. LaSalle  
Chicago, IL 60601

99  
02050107

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1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, "Mortgage") given as security for the Reimbursement Agreement.

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, royalties, accounts, accounts receivable, escrows, security deposits, impounds, reserves, tax refunds and other receivables and rights to monies arising out of or from its leasehold interest in the Premises and the businesses and operations conducted by Assignor thereon, including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease, sublease or Theater Rental Agreement (as defined below), licenses, or similar agreements (collectively, "Leases"; but excluding from such definition, (x) the Ground Lease, and (y) all Theater Rental Agreements), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (ii) all rights and claims for damage against tenants, occupants or licensees arising out of defaults under the Leases and/or Theater Rental Agreements, including rights to termination fees and compensation with respect to rejected Leases or Theater Rental Agreements pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; (iii) all tenant improvements and fixtures owned by Assignor located on the Premises; and (iv) all commitment letters and theater rental agreements or theater use agreements with participating performance companies ("Theater Rental Agreements"). Nothing herein contained shall be deemed to grant to Assignee any rights to or security interest in box office receipts resulting from ticket sales for performances related to the participating performance companies, it being acknowledged by Assignee that such receipts are the property of the companies, subject to the terms of the applicable Theater Rental Agreement. Provided, however, in the event of an Event of Default and Assignee's exercise of its rights under this Assignment, Assignee shall have all rights of Assignor in and with respect to such ticket sales in accordance with the terms of the Theater Rental Agreements. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee given to secure:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by the Reimbursement Agreement and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Assignee by Assignor under or with respect to the Basic Documents (as defined in the Reimbursement Agreement); and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor which are evidenced or secured by or otherwise provided in the Reimbursement Agreement, this Assignment or any of the other Basic Documents, together with all amendments and modifications thereof.

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3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is the lessor or the grantor of the license to use the Property granted under all Leases and Theater Rental Agreements;

(c) there is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Leases, Theater Rental Agreements, or any of the rents, issues, income or profits assigned hereunder, nor has Assignor entered into any agreement to subordinate any of the Leases, Theater Rental Agreements, or such Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

(d) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

(e) no party to any Lease or Theater Rental Agreement is in default under the terms of any such Lease or Theater Rental Agreement.

4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not lease or grant a license for the use of any portion of the Premises unless Assignor obtains Assignee's prior written consent (which consent shall not be unreasonably withheld, and which shall be deemed given if not withheld in writing within five (5) business days following Assignor's request therefor) to such Lease or Theater Rental Agreement provided, however, such prior consent shall not be required if and only if (A) such Theater Rental Agreement substantially conforms with the form of agreement attached hereto as Exhibit B; and (B) with regard to Theater Rental Agreements covering in excess of fourteen (14) performances at the Premises, Assignor has delivered a final executed copy of any such Theater Rental Agreement to Assignee.

(b) Assignor shall observe and perform in all material respects all of the covenants, terms, conditions and agreements contained in the Leases or Theater Rental Agreements to be observed or performed by the lessor (or, as applicable, the grantor of a license to use the Premises) thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not outside the normal course of business: (i) release the liability of any tenant and/or licensee under any Lease or Theater Rental Agreement, (ii) consent to any tenant's and/or licensee's withholding of rent (or other sums due) or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's and/or licensee's claim of a total or partial eviction, (iv) consent to a tenant or licensee termination or cancellation of any Lease or Theater Rental Agreement, except as specifically provided therein, or (v) enter into any oral leases or licenses with respect to all or any portion of the Premises; provided that

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Assignor shall notify Assignee promptly after the occurrence of any of the foregoing done in the normal course of business;

(c) Assignor shall not, outside the normal course of business, collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits, box office receipts or any other sums required to be paid in advance in accordance with the applicable Theater Rental Agreements;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, Theater Rental Agreements, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Basic Documents;

(e) Assignor shall not, outside the normal course of business, modify, in any material respect, the terms and provisions of any Lease or Theater Rental Agreement, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease or Theater Rental Agreement, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease or Theater Rental Agreement, unless it is commercially reasonable to do so, without Assignee's prior written consent (which consent shall not be unreasonably withheld); provided, however, that Assignor shall notify Assignee, in writing, promptly after the occurrence of any of the foregoing. Additionally, Assignor may cancel or terminate any Lease or Theater Rental Agreement as a result of a material default by the tenant and/or licensee thereunder and failure of such tenant and/or licensee to cure the default within the applicable time periods set forth in the applicable Lease or Theater Rental Agreement, provided that Assignor has first provided written notice to Assignee of any such material defaults;

(f) Assignor shall not accept a surrender of any Lease or Theater Rental Agreement or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease or Theater Rental Agreement so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or unless it is commercially reasonable to do so, a termination or diminution of the obligations of, any tenant thereunder; provided, however, that Assignor shall notify Assignee, in writing, promptly after the occurrence of any of the foregoing.

(g) Unless it is commercially reasonable to so, Assignor shall not waive or excuse the obligation to pay rent or other sums due under any Lease or Theater Rental Agreement, provided, however, that Assignor shall provide prompt written notice thereof to Assignee;

(h) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or Theater Rental Agreement, or the obligations, duties or liabilities of the lessor, grantor, or any tenant, licensee or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such



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action or proceeding in which Assignee reasonably deems that it must appear in order to protect its interests.

(i) Assignor shall give prompt notice to Assignee of any notice of any default by the lessor under any Lease or licensor under any Theater Rental Agreement received from any tenant, licensee, or guarantor thereunder;

(j) If it is commercially reasonable to do so, Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease and Theater Rental Agreement to be observed and performed by the tenants and/or licensees thereunder;

(k) Assignor shall not permit any of the Leases or Theater Rental Agreements to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent; and Assignor shall not execute hereafter any Lease or Theater Rental Agreement unless there shall be included therein a provision providing that the tenant/licensee thereunder acknowledges that such Lease and/or Theater Rental Agreement has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor/licensor under such Lease and/or Theater Rental Agreement unless such sums have actually been received in cash by Assignee as security for tenant's/licensee's performance under such Lease or Theater Rental Agreement;

(l) If any tenant and/or licensee under any Lease or Theater Rental Agreement is or becomes the subject of any proceeding under the Bankruptcy Reform Act of 1978, as amended or recodified from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases and/or Theater Rental Agreements assigned hereby, Assignor covenants and agrees that if any such Lease or Theater Rental Agreement is so terminated or rejected, no settlement for damages in excess of fifty thousand and no/100 dollars (\$50,000) shall be made without the prior written consent of Assignee, which consent shall not be unreasonably withheld, delayed or deferred.

5. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Paragraph 6) shall occur, Assignor shall have the right to collect, at the time provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the tenants under the Leases and/or the licensees under the Theater Rental Agreements of the existence of this Assignment at any time. Assignee shall deliver a copy of any such notice to Assignor.

6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within any applicable cure period set forth herein or in the Reimbursement Agreement or (b) any

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other Event of Default described in the Reimbursement Agreement, Mortgage or the other Basic Documents.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Reimbursement Agreement from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Basic Documents:

(a) Declare any unpaid amounts due under the Reimbursement Agreement, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases and/or Theater Rental Agreements, to obtain and evict tenants and/or licensees, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and/or Theater Rental Agreements and all the lessor's/licensor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants and/or licensees under the Leases and/or Theater Rental Agreements to pay all rents and other amounts payable under the Leases and/or Theater Rental Agreements to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases and/or Theater Rental Agreements to be observed or performed by the tenants and/or licensees thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants and/or licensees under the Leases and/or Theater Rental Agreements to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem reasonably necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

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8. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Assignee shall elect in its sole and absolute discretion.

9. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease or Theater Rental Agreement to be observed or performed by the lessor (or grantor of the license) thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Assignee) and hold Assignee harmless from and against any and all liability, loss or damage which Assignee may incur under any Lease or Theater Rental Agreement or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease or Theater Rental Agreement; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's gross negligence or willful misconduct. Should Assignee incur any such liability, loss or damage under any Lease or Theater Rental Agreement or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become due and payable by Assignor on demand with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease or Theater Rental Agreement, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Basic Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments, and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any

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party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases and/or Theater Rental Agreements as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may reasonably request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.
12. **Security Deposits.** Assignor acknowledges that Assignee has not received for its own account any security deposited by any tenant and/or licensee pursuant to the terms of the Leases and/or Theater Rental Agreements and that Assignee assumes no responsibility or liability for any security so deposited.
13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.
14. **Successors and Assigns.** This Assignment is binding upon Assignor and its legal representatives, successors and permitted assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.
15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.
16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid all amounts due and owing under the Reimbursement Agreement, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Basic Documents.
17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.
18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Mortgage.
19. **Waiver of Trial by Jury.** **ASSIGNOR (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR**



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**PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES.**

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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment as of the day and year first above written.

**MUSIC AND DANCE THEATER  
CHICAGO, INC.**, an Illinois not-for-profit  
corporation

By: *Joan W. Harris*  
Name: Joan W. Harris  
Title: Chair

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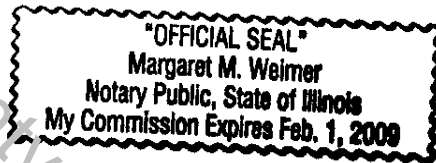
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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Margaret M. Weimer, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joan W. Harris, the Chair of Music and Dance Theater Chicago, Inc., an Illinois not-for-profit corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chair, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 9th day of May, 2005.

Margaret M. Weimer  
Notary Public



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## EXHIBIT A

### Legal Description of Premises

#### PARCEL 1:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH 1/2 FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979 AS DOCUMENT NUMBER 25275446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 191.41 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET; THENCE SOUTH 89 DEGREES 56 MINUTES 53 SECONDS WEST, 179.41 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 217.86 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, ALONG SAID SOUTH LINE OF EAST RANDOLPH STREET, 182.82 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH 1/2 FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14,



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EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972 BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET, 191.41 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 56 MINUTES 53 SECONDS WEST, 179.41 FEET; THENCE SOUTH 01 DEGREES 14 MINUTES 04 SECONDS EAST, 43.32 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 25 SECONDS EAST, 177.73 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 29.97 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 0.81 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 13.22 FEET TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PART OF SAID PARCEL LYING ABOVE A HORIZONTAL PLANE OF (+) 22.50 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

NON-EXCLUSIVE EASEMENTS AS CONTAINED IN THE GROUND LEASE DATED FEBRUARY 1, 2002 BETWEEN CITY OF CHICAGO, ILLINOIS, AND CHICAGO MUSIC AND DANCE THEATER, A MEMORANDUM WHICH WAS RECORDED FEBRUARY 11, 2002 AS DOCUMENT NUMBER 0020169342, INCLUDING, BUT NOT LIMITED TO: FOR COMMON SUPPORT ELEMENTS AS DISCLOSED BY SECTION 2.14(A) FOR THE USE, MAINTENANCE, AND SUPPORT OF THE SOIL RETENTION FACILITIES AS DISCLOSED BY SECTION 2.14 (B); FOR THE FREIGHT ELEVATOR THOSE PORTIONS OF THE MILLENIUM PROJECT PROPERTY ADJACENT TO AND REASONABLY

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REQUIRED FOR THE CONSTRUCTION, USE, MAINTENANCE AND SUPPORT OF THE FREIGHT ELEVATOR AS DISCLOSED BY SECTION 2.15 (A); FOR THE RAFT SLAB AND IN THE PORTION OF THE MILLENIUM PROJECT PROPERTY OCCUPIED BY THE RAFT SLAB FOR ATTACHING, MAINTAINING, REPLACING AND REPAIRING FIXTURES, CORING FOR CONDUIT, ANCHORS FOR WALLS AND OTHER ANCILLARY IMPROVEMENTS RELATED TO THE FACILITY, AS DISCLOSED BY SECTION 2.16; FOR MINOR ENCROACHMENTS BETWEEN THE MILLENIUM PROJECT PROPERTY AND THE FACILITY SITE AND A SEPARATION EASEMENT AS DISCLOSED BY SECTION 2.17 (A); OVER, UPON AND ACROSS THE SHEER WALL AND IN THE PORTION OF THE MILLENIUM PROJECT PROPERTY OCCUPIED BY THE SHEER WALL FOR ATTACHING, MAINTAINING, REPLACING AND REPAIRING THE INSULATION AS DISCLOSED BY SECTION 2.17(B); A TEMPORARY CONSTRUCTION EASEMENT IN AND THROUGH THE MILLENIUM PROJECT PROPERTY FOR THE PURPOSE OF CONSTRUCTING AND INSTALLING PORTIONS OF THE FACILITY AS DISCLOSED BY SECTION 2.18; AND INGRESS AND EGRESS TO AND FROM THE GARAGE ELEVATOR OR SUCH OTHER REPLACEMENT ELEVATOR OR ACCESS THAT THE CITY IN ITS REASONABLE JUDGMENT DEEMS NECESSARY OR DESIRABLE IN SUBSTITUTION THEREFOR AND FOR PEDESTRIAN INGRESS AND EGRESS UPON, OVER, THROUGH AND ACROSS THE GARAGE AS MAY BE REASONABLY ANCILLARY TO SUCH GARAGE ELEVATION USE AND FOR THE PURPOSE OF PLACING AND MAINTAINING INFORMATIONAL SIGNAGE FOR THE FACILITY WITHIN THE GARAGE ELEVATOR AND THE GARAGE, AS DISCLOSED BY SECTION 2.20 (B).

## PARCEL 4:

NON-EXCLUSIVE EASEMENTS AS CONTAINED IN THE GROUND LEASE DATED FEBRUARY 1, 2002 BETWEEN, THE CITY OF CHICAGO, ILLINOIS, AND CHICAGO MUSIC AND DANCE THEATER, A MEMORANDUM OF WHICH WAS RECORDED FEBRUARY 11, 2002 AS DOCUMENT NUMBER 0020169342 FOR THE AIR RIGHTS AND THOSE PORTIONS OF THE MILLENNIUM PROJECT PROPERTY ADJACENT TO THE AIR RIGHTS AS SUCH ARE REASONABLY REQUIRED FOR INGRESS AND EGRESS FOR THE INSPECTION, REPLACEMENT, REPAIR AND MAINTENANCE OF THE FACILITY AS REQUIRED OR PERMITTED IN GROUND LEASE, AS DISCLOSED BY SECTION 2.4(A).

## EASEMENT "A":

NON-EXCLUSIVE EASEMENT FOR STRUCTURAL SUPPORT AS CREATED BY THE GROUND LEASE DATED FEBRUARY 1, 2002 BETWEEN THE CITY OF CHICAGO, ILLINOIS AND CHICAGO MUSIC AND DANCE THEATER, A MEMORANDUM OF WHICH WAS RECORDED FEBRUARY 11, 2002 AS DOCUMENT NUMBER 0020169342 OVER THE LAND DESCRIBED AS:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH 1/2 FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14,

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EAST OF THE THIRD PRINCIPAL MERIDIAN. BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972 BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 191.41 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 10.00 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST 212.90 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, 1.00 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 2.27 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG SAID SOUTH LINE OF EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EASEMENT "B":

NON-EXCLUSIVE EASEMENT FOR STRUCTURAL SUPPORT AS CREATED BY THE GROUND LEASE DATED FEBRUARY 1, 2002 BETWEEN THE CITY OF CHICAGO, ILLINOIS AND CHICAGO MUSIC AND DANCE THEATER, A MEMORANDUM OF WHICH WAS RECORDED FEBRUARY 11, 2002 AS DOCUMENT NUMBER 0020169342 OVER THE LAND DESCRIBED AS:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH 1/2 FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14,

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EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979 AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 191.41 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 10.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 13.35 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, 0.81 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 44.83 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 23 SECONDS WEST, 197.43 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 47.91 FEET; THENCE SOUTH 89 DEGREES 56 MINUTES 53 SECONDS WEST, 10.00 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 20.00 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 20.00 FEET; THENCE SOUTH 01 DEGREES 14 MINUTES 04 SECONDS EAST, 52.90 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 23 SECONDS EAST, 177.73 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 29.97 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 0.81 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 13.22 FEET TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PART OF SAID PARCEL LYING ABOVE A HORIZONTAL PLANE OF (+) 28.50 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.



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## EASEMENT "C":

NON-EXCLUSIVE EASEMENT FOR STRUCTURAL SUPPORT AS CREATED BY THE GROUND LEASE DATED FEBRUARY 1, 2002 BETWEEN THE CITY OF CHICAGO, ILLINOIS AND CHICAGO MUSIC AND DANCE THEATER, A MEMORANDUM OF WHICH WAS RECORDED FEBRUARY 11, 2002 AS DOCUMENT NUMBER 0020169342 OVER THE LAND DESCRIBED AS: A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH 1/2 FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 384.24 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREES 14 MINUTES 04 SECONDS EAST, 208.41 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 10.00 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 208.27 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG SAID SOUTH LINE OF EAST RANDOLPH STREET, 10.01 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Tax Parcel Number: 17-10-500-032-6001 and 17-10-500-032-6002

Property Address: Millennium Park/Music and Dance Theater Chicago, Inc., 205 East Randolph Street, Chicago, Illinois 60601

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## EXHIBIT B

### Form of Theater Rental Agreement

See attached.

Property of Cook County Clerk's Office

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MUSIC AND DANCE THEATER CHICAGO, INC.

## THEATER USE AGREEMENT

This Theater Use Agreement (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2004, between Music and Dance Theater Chicago, Inc., an Illinois not-for-profit corporation having its office at 205 East Randolph Drive, Chicago, Illinois 60601 ("MADTC") and \_\_\_\_\_, an Illinois not-for-profit corporation having its offices at \_\_\_\_\_, Chicago, Illinois 6060\_\_ ("Company").

In consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. ENGAGEMENT AND PREMISES.

1.1 MADTC hereby licenses to Company the exclusive (except as provided in Section 1.4 below) use of the auditorium, stage and orchestra pit of the main stage of MADTC, located at 205 East Randolph, Chicago, Illinois 60601, together with the dressing rooms, scene dock, corridors, lounge, lobbies and vestibules (collectively the "Premises") on the following dates ("Usage Dates"), for the following performance schedule, and for the following purposes only:

- (a) Usage Dates and times: **[insert dates and times]**.
- (b) Number of Usage Days: \_\_\_\_\_.
- (c) Performance Schedule:

<u>Date</u>	<u>Time</u>	<u>Production</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (d) Capacity: 1,525.
- (e) Box Office Opening Date: July 12, 2004.
- (f) This engagement is for the performance of: \_\_\_\_\_.

1.2 No other use of the Premises by Company shall be permitted, including the substitution of any originally scheduled performance, without the express prior written consent of MADTC.

1.3 The performances at the dates and times herein specified are hereinafter referred to collectively as the "Engagement."

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1.4 MADTC reserves the right to permit rehearsals of other productions and to permit other attractions in the Premises during the Usage Dates, provided that such rehearsals or other attractions do not interfere, in the reasonable opinion of MADTC, with Company's use of the Premises. In such event, Company shall not be responsible for any direct or indirect (such as overtime) costs related to said activity, and the Company will be reimbursed a prorated portion of the daily "Usage Fee" (as hereinafter defined).

2. MADTC'S OBLIGATIONS. In addition to the use of the Premises, subject to Article 5, below, MADTC also shall provide the following:

2.1 Electricity, proper light and normal cleaning of the Premises and such heating or air conditioning as MADTC deems necessary for the comfortable and safe use and occupancy of the Premises, house and backstage supplies customarily supplied by similar theater facilities, such as toilet tissue, soap, light bulbs and dressing room fixtures.

2.2 Services of the theater box office ("Box Office"), according to the following schedule:

(a) From 12 noon until 6pm on Monday through Friday during the period between the Box Office Opening Date set forth in Section 1.1 (e), above, and Company's first performance of the Engagement and on days during the Engagement when no performance is given. MADTC reserves the right to sell only tickets from the Lower Lobby Box Office for the current performance during the half hour before each performance.

(b) On days during the Engagement during which there is only an afternoon performance, the Box Office shall be open from 12:00 Noon through the end of the first intermission.

(c) On days during the Engagement in which there is only an evening performance, or an afternoon and an evening performance, the Box Office shall be open from 12 noon through the end of the first intermission of the final performance.

2.3 Telephone Engagement information, Company's own subscription sales and mail order or group ticket sales fulfillment ("Fulfillment Services") on the following basis:

(a) MADTC exclusively will provide Fulfillment Services unless Company notifies MADTC in writing ("Fulfillment Notice") simultaneously with the execution of this Agreement of Company's desire to offer its own subscription, group, or mail order sales. If MADTC is so notified, MADTC will provide partial Fulfillment Services as outlined in section 2.7 with Company with respect to the Engagement. If MADTC is not so notified, MADTC shall act as exclusive agent for all Fulfillment Services as set forth in Section 2.7, below.



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- (b) If MADTC is fulfilling subscription or mail orders for the Company under Section 2.3(a), above, Company shall provide, at least eight (8) weeks prior to the Company's sales campaign, sufficient information regarding the nature of offering(s), coupons and deadlines in order that MADTC can properly fulfill orders and generate reports of said sales, which materials shall be subject to MADTC's prior written approval, which approval shall not be unreasonably withheld or delayed.
- (c) For Company's own offering(s) of tickets and materials related to the Engagement, the appearance of MADTC's name and logo on such material must meet the prescribed guidelines as listed below in Sections 8.2 and 8.3.
- (d) There will be a charge to Company of One Dollar (\$1.00) per single ticket sold at window, Two Dollars (\$2.00) for telephone and mail orders, and Four Dollars (\$4.00) per Company subscription order processed by MADTC as part of its Fulfillment Services. There will be a charge of Ten Dollars (\$10.00) per group sales order of twenty (20) tickets or more in lieu of single ticket charge. Company may elect to make this a handling charge payable by the customer. For any complimentary ticket requests given to the Box Office by the Company after 72 Hours prior to a given performance, a charge of One Dollar (\$1.00) per complimentary ticket will be charged to the Company. MADTC reserves the right to charge Company additional reasonable processing fees to handle fulfillment services for the Company's own subscriptions or if additional services are required.
- (e) MADTC will provide telephone information service with general information about the Engagement, including, but not limited to, show times, ticket prices, plot summary, directions to MADTC, the location of MADTC, seats and similar information. Under no circumstances shall MADTC be responsible for the content of any information supplied by Company and disseminated by MADTC.
- 2.4 Lighting equipment, sound equipment, and soft goods enumerated in Appendix A, including lamps. Replacement lamps are the responsibility of the Company during its Usage Dates and shall remain in place at the conclusion of the Usage Dates.
- 2.5 House Manager, Technical Director, Box Office personnel, ushers, ticket takers, cleaners, security (between 8:00 a.m. and 6:00 p.m., and 11:00 p.m. on performance dates) and engineering personnel in such number as MADTC reasonably deems necessary and according to applicable agreements for the Premises and the Engagement.
- 2.6 During the Engagement, the Premises shall be available for performances Monday through Sunday from the hours of 6:00 p.m. and concluding by 11:00 p.m. for evening performances, and from 1:00 p.m. and concluding by 6:00 p.m.

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for afternoon performances. Notwithstanding the foregoing, unless otherwise agreed to by MADTC in writing, a performance may not exceed four (4) hours (including intermission), and the number of performances in any week may not exceed eight (8). The foregoing four (4) hour period starts with the scheduled curtain time and ends with the final curtain after all curtain calls and completion of any front of curtain activities. In addition, the Premises shall be available to Company from 8:00 a.m. to 11:00 p.m. on each Usage Date for load-in, load-out, set-ups, technical or work light rehearsals.

2.7 Except as otherwise provided in the Fulfillment Notice, if MADTC is providing Fulfillment Services under this Agreement, Company hereby retains and engages MADTC to be its exclusive agent for the sale, return and/or exchange of all tickets ordered through the Box Office, whether by mail, fax, telephone or internet for the Engagement. Company covenants and agrees that all tickets made available for public sale through the Box Office or otherwise shall be available through MADTC's phone charge service (hereinafter referred to as "Music and Dance Charge"). Music and Dance Charge will be available for credit card ticket sales via telephone only on days during which tickets are also for sale at the Box Office. Music and Dance Charge also will function as the general telephone information service.

### 3. COMPANY'S OBLIGATIONS.

3.1 Selection of Company's programs and all artistic elements thereof shall be at Company's discretion. In order for MADTC production and ticket services staffs to plan and prepare for the Engagement, Company shall submit a schedule of and descriptive information on its performance repertory to MADTC, at least three (3) months prior to the Engagement. Company agrees to present its performances at the dates and times listed in Section 1.1(c), above, or as otherwise agreed to by MADTC and to provide at Company's expense such performers, dressers and musicians as may be required by Company and such artistic, performing, supervisory, production, technical, rehearsal and management personnel as Company deems necessary. In addition, and to the extent not provided as part of MADTC's standard lighting and sound equipment as specified in Appendix A, Company shall provide at its expense all elements necessary for the presentation of Company's performances, including, but not limited to, costumes, scenery, lighting and sound equipment, lighting gels, musical scores and taped music. Company, at its expense, shall be responsible for delivery and pickup of all such effects to and from the Premises.

3.2 Company shall be responsible for the payment of all compensation for Company's personnel, including, but not limited to, performers, managers and production personnel for the Engagement, and any social security, withholding and other employee taxes and worker's compensation, unemployment and disability insurance, or such other insurance or employee benefits required by law or applicable agreements. Company also shall be responsible for payment of any or all royalties payable in connection with its performances, including without limitation, royalties or fees to performing rights societies, composers, set, scenic,

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lighting, costume, and sound designers. In addition, Company shall reimburse MADTC for all compensation for MADTC's stagehands and personnel, and any social security, withholding and other employee taxes and worker's compensation, unemployment and disability insurance, or such other insurance or employee benefits required by law or applicable agreements for additional personnel and/or services (including but not limited to security services and ticket takers), costs and expenses incurred by MADTC at the request of the Company or otherwise incurred by MADTC in its reasonable discretion as necessary to operate a professional performing arts theater in the City of Chicago, provided, however, that MADTC shall use reasonable efforts to give the Company reasonable prior notice of the need for, and the estimated cost of, such additional costs and expenses. Notwithstanding the foregoing, the Company shall not be responsible for any employee-related costs incurred by MADTC related to the failure of any in-house equipment or the repair of the same, unless caused by the negligence or willful misconduct of the Company.

- 3.3 With respect to stage personnel and technical requirements, a production meeting with Company will be held at the Premises on or before \_\_\_\_\_, 200\_\_, at which Company shall provide MADTC a detailed production schedule of all technical, rehearsal and performance activities during the Usage Dates and the Engagement and a lighting plot and line schedule conforming to U.S. standards drawn to 1/2" scale indicating the manner all such stage equipment should be used.
- 3.4 With respect to front-of-house and ticketing operations, a meeting with Company and front-of-house staff will be held at the Premises on or before \_\_\_\_\_, 200\_\_, to discuss any public or private events including performance activities to take place on the Premises during the Usage Dates and the Engagement.
- 3.5 Company agrees to permit representatives of MADTC to attend dress rehearsals and to allow selected patrons of MADTC to attend dress rehearsals on date(s) to be mutually agreed upon. MADTC agrees during such dress rehearsals to provide appropriate front-of-house staff, provided the selection of patrons to attend said rehearsals is under the exclusive control of MADTC. If the selection of patrons is mutually coordinated by MADTC and Company, it is agreed that the cost of appropriate front-of-house staff shall be an additional charge paid for equally by MADTC and the Company.

#### 4. SPECIAL ACCESS PROGRAMS.

- 4.1 Access by wheelchair is available at certain levels of MADTC. Company will cooperate by (a) withholding the specified seating areas from general sale for use by physically challenged patrons, and by (b) including notification of access in all public advertising as directed by the MADTC Management Office. The following seats are wheelchair accessible and shall be assigned at the sole discretion of MADTC's Box Office Manager:

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- (a) Orchestra: Row R: 24, 26, 28 (two wheelchairs), 23, 25, 27 (two wheelchairs) Row DD: 24, 26, 28 (two wheelchairs), 23, 25, 27 (two wheelchairs)
- (b) Lower Balcony: Row A: 30, 32, 34 (two wheelchairs), 29, 31, 33 (two wheelchairs)
- (c) Upper Balcony: Row J: 26, 28, 30 (two wheelchairs), 25, 27, 29 (two wheelchairs)

## 5. DEPOSITS, FEES AND BOX OFFICE RECEIPTS.

5.1 Upon signing this Agreement, Company shall pay to MADTC a non-refundable deposit of \$4,250.00.

5.2 Company shall deliver to MADTC an additional deposit of \$ \_\_\_\_\_ to be paid by \_\_\_\_\_.

5.3 Following the production meeting referred to in Section 3.3, above, MADTC reserves the right in its sole discretion to require an additional deposit, which may, in MADTC's sole and absolute discretion, include up to the full amount of payment obligations ("Obligations") expected to be due MADTC under Articles 3 and 5 of this Agreement, and the usage fee ("Usage Fee") of \$4,250 per day. Within three (3) business days following the date that Company is notified of such amount by MADTC, Company shall deliver to MADTC a certified check for the required additional deposit.

5.4 Subject to MADTC's right to withhold amounts from the final settlement as provided for in Section 5.8, below, and provided Company has complied with all the terms and conditions of this Agreement and shall not be in default thereunder, at the end of the Engagement the Deposit shall be credited to Company without interest.

5.5 In the event that Company cancels any performances or Usage Dates, Company shall not be entitled to a refund of the Usage Fee for the cancelled Usage Date, and such sums shall not be deemed a penalty. In the event, however, MADTC is able to mitigate its damages by securing a substitute booking, the Usage Fee for the cancelled Usage Date, less MADTC's reasonable costs to obtain a replacement booking, shall be credited against the Usage Fee that would otherwise be payable by Company for the cancelled date. In addition, Company shall reimburse MADTC for any expenses incurred on behalf of Company and/or as a result of such cancellation.

5.6 Box Office Receipts shall be determined as follows:

- (a) "Adjusted Gross Box Office Receipts" (and "Subscription Receipts", if applicable) shall be deemed to mean proceeds actually received by the Box Office from the sale of tickets, whether at face value or discounted, less all handling fees for credit card charges, taxes on admission, if any, and any other charges imposed by ticket sales outlets authorized by MADTC. The receipts of each performance shall be documented using MADTC's standard form of "Box Office Statement" of sales and shall be

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audited **weekly/daily** during the Engagement by either the CHOICE Ticket Report, and/or if desired by the Company, by the count of ticket stubs. Company shall designate a representative to verify by signature the Box Office Statement.

- (b) All Box Office receipts shall be deposited regularly by MADTC's Box Office Manager in a segregated bank account for Box Office receipts. Receipts from the sale of tickets for each performance will (subject to Section 5.7) become Company's property only upon completion of each **week/day** of performances. Settlement of said receipts shall occur on the date ("Settlement Date") that is the Wednesday following each week containing a Usage Date. A week is defined as Monday through Sunday (i.e., Settlements are made on each Wednesday covering Monday through Sunday of the prior week).
- 5.7 On each Settlement Date, MADTC shall be entitled to deduct and retain from the Adjusted Gross Box Office receipts, Subscription Receipts and Deposits the following charges, all of which shall be itemized in writing and provided to Company on or before the applicable Settlement Date:
- (a) A Usage Fee of Four Thousand Two Hundred and Fifty Dollars (\$4,250.00) for any Usage Date during the period covered by the Settlement Statement; and
  - (b) A charge per day for front-of-house personnel for the Usage Date during the Engagement, as over and above that specified in Section 2.5 above, which sum includes employee taxes and benefits as required by law or applicable agreements. Upon finalization of the agreed performance schedule, a specific quotation of front-of-house charges will be issued by MADTC; and
  - (c) All Obligations of the Company incurred during the Usage Dates, including, but not limited to, wages, social security, withholding and other employee taxes, worker's compensation, unemployment and disability insurance, or such other insurance or employee benefits as required by law or applicable agreements; and
  - (d) Charges for overtime costs for personnel required during the applicable Usage Dates and supplied by MADTC to the extent such overtime services are requested or caused by Company, including, but not limited to, costs and expenses related to Fulfillment Services, Box Office services, and Box Office expenses if Company's ticket sales campaign materials have not been approved by MADTC, and any other personnel costs, in the reasonable discretion of MADTC; and
  - (e) Charges for additional security and traffic control services provided by MADTC as MADTC reasonably deems necessary during the Usage Dates; and



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- (f) All postage costs for mailing tickets at current postal rates, including costs for certified mail for group sales; and
  - (g) MADTC group sales commissions, if applicable; and
  - (h) Any sums due MADTC as a result of Company's failure to comply with the terms of this Agreement, including but not limited to the provisions of Article 3 and Sections 13.1 and 13.2 of this Agreement.
- 5.8 MADTC also shall have the right, on the final Settlement Date, to withhold up to Five Hundred Dollars (\$500.00) from sums owing to Company. Two (2) weeks from the date of such final Settlement Date, the Five Hundred Dollars (\$500.00) held by MADTC shall be returned to Company, all without interest, provided Company has complied with all the terms and conditions of this Agreement and shall not be in default hereunder.
- 5.9 In the event that Adjusted Gross Box Office Receipts and Subscription Receipts for the applicable period and applicable Deposits do not equal or exceed the amount due to MADTC each week as reflected on the Settlement Statement, Company shall pay to MADTC on each Settlement Date the difference between Adjusted Gross Box Office Receipts and the amount due to MADTC.
- 5.10 In the event of any customer disputes regarding tickets ordered or sold through either Music and Dance Charge or the Box Office for any ticket order, MADTC shall make every reasonable effort to compromise or settle such disputes. MADTC may credit any such customer's account for any amount in dispute, if, in the reasonable opinion of MADTC, it is necessary to settle any such dispute. Company agrees and hereby authorizes MADTC to deduct any amount so credited from payments due to Company pursuant hereto. MADTC shall provide Company with appropriate documentation of any and all such action.
- 5.11 In addition to the above, Company shall be responsible for any retroactive wage adjustment for personnel utilized during the Usage Dates, the initial cost for which were Company's responsibility under above Section 5. (c) or (d) above.

## 6. TICKETS.

- 6.1 If MADTC is providing exclusive Fulfillment Services, Company agrees that it will not advertise or cause others to advertise tickets or subscription sales for the Engagement hereunder as being, or to be, for sale at any place other than through the Box Office or Music and Dance Charge. Group Sales proceeds through the Box Office shall be accounted for on Box Office Statements for the applicable performances. Company shall have the right to allow discounted tickets for all performances. Company hereby approves the use of Visa, MasterCard and American Express credit cards, if applicable. MADTC reserves the right to discontinue the use of any of the foregoing card companies in the event MADTC determines that such programs cannot properly service the ticket needs of MADTC or Company for the sale of Company's tickets. Acceptance of checks for the purchase of tickets shall be subject to the discretion of MADTC's Box

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Office Manager. Any checks or money orders to be accepted in payment for single tickets or subscriptions shall be made payable to MADTC. Company hereby assumes full responsibility for any checks returned for insufficient funds and for unauthorized use of credit cards, including the inability of any credit card company to pay for tickets ordered through or by such credit card companies.

- 6.2 Music and Dance Charge will charge and collect from all purchasers of tickets through Music and Dance Charge that are ordered by telephone for the Engagement a service charge on each ticket of Two Dollars (\$2.00) over and above the ticket price. Such service charge will be retained by MADTC, and Company hereby authorizes such service charge to be added to the ticket price of all tickets ordered through Music and Dance Charge for the Engagement. Such service charge will not be deducted from any money owed to MADTC by Company except in the event of cancellation as set forth in Article 7, below.
- 6.3 MADTC and Company reserve the right to use for their own purposes all names and addresses and other information about individuals and/or groups who purchase or inquire about tickets.
- 6.4 MADTC and Company reserve the right to purchase at face value house seats ("House Seats") for any performance during the Engagement upon presentation of any order therefor, signed by a duly authorized representative of MADTC or Company, setting forth the number of seats desired to the MADTC Box Office no later than 6:00 PM of the day prior to the day of any such performance. MADTC reserves the right to use, without charge four (4) seats for each performance ("Complimentary Seats"), including opening night. The following seats, and such other seats as may be agreed upon, shall be reserved for the filling of House Seat and Complimentary Seat orders issued by MADTC for all performances including the opening night performance:
- (a) Complimentary Seats: Row S: 101, 102, 103, 104
- House Seats: Row O: 101-116
- 6.5 The issuance of additional complimentary tickets shall be at the discretion of the Company.
- 6.6 Admission to all performances during the Engagement shall be solely by way of tickets furnished or approved by MADTC. All events must be ticketed events, whether reserved or general admission. The theater must not exceed its capacity of 1,525 seats at any time.

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7. TICKET REFUNDS. Should Company fail to perform or hold any scheduled or announced performance by reason of the fact that MADTC has terminated this Agreement, MADTC shall be authorized to make immediate restitution from the Adjusted Gross Box Office receipts to all persons who present to MADTC for refund any tickets purchased through MADTC to any such performance not performed or held to the extent of the price printed or discounted, as so indicated, on the ticket or tickets presented minus the cost of any handling charge imposed by MADTC. Except where this Agreement has been terminated pursuant to Section 15.2, below, Company shall reimburse MADTC for all amounts which MADTC shall pay for such refunds in excess of funds theretofore collected and held by MADTC for the Engagement, in connection with the sale of tickets to any such performance not so performed or held.
8. ADVERTISING.
- 8.1 All advertising of the Engagement with the exception of MADTC seasonal and institutional advertising shall be at the sole expense and under the control of Company, provided, however, MADTC shall have the right to correct advertising information pertaining to Music and Dance Charge or to MADTC. Company advertising pertaining to performances at the Premises shall be forwarded by Company to MADTC's General Manager for approval at least one week prior to the printing of any materials.
- 8.2 Company will promote and advertise in the customary manner all attractions and events and the availability of tickets through Music and Dance Charge, it being understood that MADTC does not undertake and is under no obligation to advertise or promote the sales of tickets through Music and Dance Charge. In all advertising or other promotional material which Company creates, causes to be produced or controls, it shall include the MADTC logo-type and telephone number in accordance with art work provided by MADTC.
- 8.3 MADTC's logo shall appear in all communications concerning Company's Engagement including, but not limited to, paid media, posters, heralds and flyers. **Company must submit copies of proposed advertising materials to MADTC for its review at least seven (7) days prior to printing.** For the purpose of the Engagement, the MADTC logo shall appear as indicated in Appendix B. However, MADTC reserves the right to change said logo design. In ad spaces one column inch or less, MADTC's logo shall only consist of the words "Music and Dance Theater Chicago, Inc.," in the same type face as complete logo. In ad spaces one column inch or larger MADTC's logo shall appear in complete format.
- 8.4 The parties agree that MADTC shall be acknowledged on Company's title page of the House Program as follows: Music and Dance Theater Chicago, Inc., in not less than 16 point type.
- 8.5 MADTC seasonal and institutional advertising shall be under the exclusive control of MADTC. No literature, posters, cards, banners, circulars, flags or other promotional material or decoration shall be posted in or about the Premises without the express consent of MADTC.

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- 8.6 MADTC reserves the right to promote within its own facility any upcoming MADTC artists/performances, provided such promotion does not cause additional costs to Company. This shall include, but not be limited to, rack space, facade display cases, (if available), and banners.
9. CONCESSIONS
- 9.1 MADTC shall have the exclusive right to operate or contract with concessionaires for the operation of checkrooms or checking facilities and for the sale of consumables, librettos, music recordings and MADTC souvenir items, and all revenue therefrom shall belong to MADTC. Company shall have the right to sell for its own account boutique type items, provided that arrangements are made with MADTC at least two (2) weeks prior to the start of the Engagement. It is understood that souvenir books may be sold. Boutique items shall be sold at times and locations approved by MADTC.
- 9.2 Company acknowledges that MADTC has an existing contract with ChicagoPlays, which, among other things, grants to ChicagoPlays the right to distribute programs in the premises and change the content and format from time to time. MADTC is entitled to 8 pages in ChicagoPlays, said pages under direct control of MADTC. Company is to contact MADTC with regard to its allocated pages and to supply MADTC with Company's program content. It is understood that no commercial logos or advertising shall be included as part of Company's pages without written consent of MADTC and ChicagoPlays. The cost to the Company of each program will be at MADTC's actual cost (estimated to be approximately \$ \_\_\_ each. TBA)
- 9.3 Company acknowledges that, by contract, ChicagoPlays can decline to produce a program book of less than 8 pages of program content, including MADTC and Company material.
- 9.4 MADTC may insert MADTC's flyers, pamphlets or other materials into ChicagoPlays with the consent of Company, which consent shall not be unreasonably withheld.
10. BROADCASTING, RECORDING AND PHOTOGRAPHS. Neither party hereto shall or permit others to broadcast, telecast, or reproduce any performance or parts thereof, nor take or permit others to take photographs during performances or rehearsals, without the prior written consent of the other party. It is understood that both parties to this Agreement consent to normal press calls, provided that all such press calls shall conform to existing rules and all parties concerned must receive at least 24 hours prior notice in writing.
11. COMPANY'S WARRANTIES, COVENANTS AND INDEMNITY.
- 11.1 Company represents and warrants that it is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) and that it will maintain such tax-exempt status throughout the term of this Agreement. A copy of Company's not-for-profit-status is attached as Appendix C.

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- 11.2 Company warrants and represents that it has the power, authority and ability to enter into this Agreement to grant the rights herein granted and to present the Engagement.
- 11.3 Company acknowledges that Company, as of the signing of this Agreement, is familiar with all collective bargaining agreements between MADTC and the various unions (a list of which appears in Appendix D) whose members render services to MADTC. Company agrees that it will not perform any act or do anything contrary or inconsistent with any of the terms or provisions of said collective bargaining agreements in effect during the Usage Dates. Copies of Agreements with said unions will be available in MADTC's office for inspection by Company.
- 11.4 Company hereby represents and warrants that the performances will not be obscene, defamatory, violate any copyright or infringe upon the literary or any other rights of any person, firm or corporation, including, but not limited to, the right of privacy. Company also represents and warrants that the presentation will not violate any governmental law, ordinance or regulatory act, and that it has obtained all necessary licenses, permissions and clearances to present the Engagement.
- 11.5 Except as occasioned by MADTC's gross negligence or intentional misconduct, or the gross negligence or intentional misconduct of MADTC's agents or employees, Company, to the extent permitted by law, hereby agrees to indemnify, defend and hold harmless MADTC, its agents, officers and employees from and against any and all loss, claims, demands, damages, judgments and liabilities of any nature whatsoever, including but not limited to those resulting from or arising out of (a) the unauthorized use of any idea, creation, literary, musical or artistic material or intellectual property in connection with any performances given hereunder, (b) any act done or words spoken by Company, its agents or employees during any such performance (c) any damage done to the Premises, or any part thereof, caused by the act or omission either of Company or any agent or employees of Company, (d) the breach by Company of this Agreement, (e) any breach or alleged breach of any warranties made by Company, or (f) any and all claims, damages, losses or expenses of every kind and nature, including reasonable attorney's fees, which directly or indirectly arise out of any action or inaction by Company, including the misfeasance, malfeasance, non-feasance or negligence of any of its employees or agents.

The foregoing indemnification provision shall remain in full force and effect notwithstanding the termination or expiration of this Agreement or the conclusion of the Engagement.

## 12. MADTC'S WARRANTIES, COVENANTS AND INDEMNITY.

- 12.1 MADTC warrants and represents that it has the power and authority to enter into this Agreement and grant the rights herein granted.



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- 12.2 MADTC warrants that it shall carry and pay for Premises and employer insurance as required by City, State and Federal law, and will provide Company upon request with a copy of MADTC's insurance certificate showing the coverages carried by MADTC related to the Premises.
- 12.3 MADTC hereby agrees to indemnify, defend and hold harmless Company, its agents, officers and employees from and against any and all loss, claims, demands, damages, judgments and liabilities suffered by any of the foregoing as a result of MADTC's gross negligence or intentional misconduct and which arise out of MADTC's failure to perform its duties and obligations under this Agreement.

The foregoing indemnification provision shall remain in full force and effect notwithstanding the termination or expiration of this Agreement or the conclusion of the Engagement.

## 13. USE OF PREMISES AND EQUIPMENT.

- 13.1 Company agrees not to alter, repair, add to, deface, improve, or change the Premises in any manner whatsoever, without the prior written consent of MADTC. The Premises shall be maintained and vacated, as and when required by this Agreement, in as good condition as it is upon entry of Company therein, reasonable wear and tear excepted. Notwithstanding the foregoing, in the event Company makes any improvement, alterations or changes in the conditions of the Premises, Company shall, upon termination of the Engagement, restore the Premises to the same condition as it was prior to such changes having been made if MADTC so requests.
- 13.2 Company agrees that any equipment Company brings into the Premises shall be at Company's sole risk, cost and expense. At least two (2) weeks prior to the first Usage Date, Company shall present to MADTC a written plan and schedule of all electrical equipment Company intends to bring into the Premises. The use of such equipment shall be subject to MADTC's approval, which shall not be unreasonably withheld. All such equipment, together with all props, scenery and other items of personalty brought into the Premises by Company must comply and conform to all rules and regulations, ordinances and statutes of the City and State of Illinois and must be fireproofed according to the requirements of law, including, but not limited to, submission of flameproofing certificate(s). All equipment supplied by MADTC must be restored to its original condition by Company at its expense at the conclusion of the Engagement, reasonable wear and tear excepted. Company shall at its own cost and expense, promptly remove any violation placed against any of its equipment, installations, theatrical property, or special effects utilized, located or maintained in the Premises.
- 13.3 Company agrees to move out its own equipment, props, scenery and furnishings prior to the termination of this Agreement or at such later time as agreed to by MADTC in writing.

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- 13.4 MADTC, its representatives and employees shall at all times have free access to the Premises in the performance of their assigned duties.
- 13.5 Company will keep no animals in or upon the Premises without first having received written permission from MADTC.

## 14. INSURANCE.

- 14.1 During the Engagement, Company shall carry and pay for Public Liability (Bodily Injury and Property Damage) Insurance with a limit of not less than One Million (\$1,000,000) Dollars per occurrence and a general aggregate of Two Million (\$2,000,000) Dollars, naming MADTC as Additional Insured against all losses and claims for personal injuries, and Fire and Theft Insurance for full replacement value of all scenery, costumes, props, electrical and sound equipment not provided by MADTC, literary and musical material, and all other properties and materials owned, rented or brought into the premises by Company, which Fire and Theft insurance policy or policies shall include a Waiver of Subrogation against MADTC. All such insurance shall be in such form and shall be taken in such amounts and with such companies as MADTC shall approve, which approval shall not be unreasonably withheld or delayed. Policies or certificates therefore (including proof of payment) shall be delivered to and held by MADTC at least two weeks prior to the first Usage Date. Company shall also carry Workers Compensation Insurance for all persons employed by Company during the Usage Dates.
- 14.2 The obtaining of insurance or the furnishings of evidence of insurance as provided herein shall not in any way relieve Company from any of the obligations, liabilities, assumptions, responsibilities or other contractual duties referred to in this Agreement, regardless of the coverage mentioned in such insurance or the terms of the policy or policies involved.

## 15. BREACH OF AGREEMENT, DESTRUCTION OF PREMISES.

- 15.1 Except as provided for in Section 15.3, below, if Company shall fail to observe any material term, condition or covenant of this Agreement or shall fail to hold any performance scheduled to be performed hereunder, or if Company shall fail to pay any sum required to be paid when the same shall be due, MADTC shall have the right, at its option, in addition to any other rights and remedies it may have, to revoke this license and to terminate this Agreement either in its entirety or with respect to any performance or performances, without any liability of MADTC to Company, and without any advance notice to Company, to turn off the lights and heat or air conditioning in the Premises and dismiss the audience occupying the Premises and may require the Company and its personnel to immediately vacate the Premises.
- 15.2 Except as provided for in Section 15.3 below, if MADTC shall fail to pay any sum due under this Agreement or otherwise is in breach of a material provision of this Agreement for a period exceeding two (2) business days of the date MADTC

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receives written notice of such failure from Company, Company may terminate this Agreement either in its entirety or with respect to any performance adversely affected by such breach.

- 15.3 If the Premises are destroyed, damaged or otherwise rendered unfit for occupancy, or if any performance is prevented, interrupted or interfered with by public authorities, fire, national or local calamity or emergency, Act of God, civil tumult, strikes or labor disputes involving either party's employees or other causes outside either party's control, either party may terminate this Agreement with respect to such performance without further liability of either party to the other, and any and all deposits paid by Company for unused Usage Dates be returned to Company; and any revenues collected by MADTC and due Company for executed performances, be paid Company, less any obligations due MADTC.
- 15.4 The MADTC Box Office and Music and Dance Charge operate with computerized ticket processing. In the event of a ticket processing malfunction resulting from equipment or software failure or other error, MADTC shall use all reasonable efforts to continue to sell tickets through alternate box office means and to deliver to Company the daily and other box office reports to be provided to Company by MADTC. All costs of MADTC with respect to providing such alternate services in the event of equipment or software failure or malfunction, including any overtime costs of MADTC personnel, shall be borne exclusively by MADTC. MADTC, however, cannot be liable for any consequential damages claimed to have been suffered by Company or claims for loss of opportunity to sell tickets to company's performances, unless those damages are the direct result of the gross negligence or intentional misconduct of MADTC.
- 15.5 Neither party shall be in default under this Agreement to the extent such party is unable to perform any of its obligations (except for Company's failure to pay sums due MADTC under this Agreement) on account of any stoppage due to strikes, lockouts, labor disputes, inability to obtain materials, fuels, energy or reasonable substitutes therefore, governmental restrictions, regulations, controls, action or inaction, civil commotion, fire or other acts of God, national emergency, or any other cause of any kind beyond the reasonable control of such party (except financial inability).
16. **DISTINCT REMEDIES.** All the rights and remedies of both parties herein shall be deemed to be distinct, separate and cumulative nor shall any mention or reference to any one or more of them be deemed an exclusion of or waiver of any of the others or of any rights or remedies which either might have, whether by present or future law and both parties shall have to the fullest extent permitted by the law the right to enforce any rights or remedies separately. No failure on the part of either party to enforce the provisions herein contained nor any waiver of any right hereunder by both parties, unless in writing, shall discharge or invalidate such provision or affect the right of either party to subsequently enforce same.

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## 17. MISCELLANEOUS.

- 17.1 No act of the parties hereto shall be construed as creating or establishing a partnership, joint venture, or association of any type between MADTC and Company and neither party shall be authorized to commit or obligate the other party without such other party's prior written consent. No act of the parties hereto shall be construed as creating or establishing a tenancy, leasehold interest, lease, or landlord/tenant relationship of any type between MADTC and Company.
- 17.2 Company shall make no assignment of this Agreement or any of its rights hereunder except with the written consent of MADTC; nor shall Company suffer or permit the Premises, or any part thereof, to be occupied or used by others without such written consent, which in each instance may be withheld in the sole discretion of MADTC.
- 17.3 All notices required or permitted to be given hereunder to MADTC or Company shall be in writing and shall be given personally or by certified mail, postage prepaid, at the address of such party set forth in this Agreement or at such other address as such party shall designate to the other in writing.
- 17.4 This Agreement shall be governed in all respects by the laws of the State of Illinois, without regard to its choice of law principles.
- 17.5 This Agreement contains the entire understanding of MADTC and Company relating to the subject matter hereof, and may not be altered, amended, modified or otherwise changed, nor may any of the terms hereof be waived, except by an instrument in writing signed by MADTC and Company.
- 17.6 The head notes and capitalization are for convenience only and are not intended in any way to define or limit the meaning of any paragraph of this Agreement.
- 17.7 This Agreement shall not be binding until duly executed by MADTC.
- 17.8 No waiver of any default of a party hereunder shall be implied from any omission by said party to take any action on account of such default.

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IN WITNESS WHEREOF, the parties have each executed this Agreement and all Appendices and Addenda on the day and year inserted below.

MUSIC AND DANCE THEATER CHICAGO, INC., an Illinois not-for-profit corporation

By: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_  
(must be officer or general manager)

Address: \_\_\_\_\_  
\_\_\_\_\_

Date of execution: \_\_\_\_\_

COMPANY

By: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_  
(must be officer or executive director)

Address: \_\_\_\_\_  
\_\_\_\_\_

Date of execution: \_\_\_\_\_