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BLOCK 35, NORTH LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
a/b/a THE GOODMAN THEATER

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BLOCK 35, NORTH LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
d/b/a THE GOODMAN THEATER

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BLOCK 35, NORTH LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
d/b/a THE GOODMAN THEATER

This Agreement ("Agreement"), dated as of October 24, 1990 is made by and between the City of Chicago, an Illinois municipal corporation, having its offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 ("City") and Chicago Theatre Group, an Illinois not for profit corporation, d/b/a The Goodman Theater, having its principal office at 200 South Columbus Drive, Chicago, Illinois 60603 ("Developer").

## RECITALS

A. The City, as a home rule unit under the 1970 Constitution of the State of Illinois, has the authority to promote the health, safety and welfare of its inhabitants, to prevent the spread of blight and to encourage private development in order to enhance the local tax base and create employment, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

B. In furtherance of its objectives to encourage the redevelopment and revitalization of blighted commercial areas, the City established the Commercial District Development Commission ("Commission").

C. On March 20, 1979, the Commission designated an area within the corporate boundaries of the City as a blighted

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commercial area to be known as "Blighted Commercial Area North Loop" ("Redevelopment Area"), and on March 20, 1979, approved a redevelopment plan ("Redevelopment Plan") for the Redevelopment Area. The blighted commercial area designation was approved by the City Council of the City of Chicago, pursuant to an ordinance duly adopted on March 28, 1979. The Redevelopment Plan was approved by the City Council pursuant to an ordinance duly adopted on March 28, 1979, and as revised, was approved by an ordinance adopted on October 27, 1982. The North Loop Guidelines for Conservation and Redevelopment ("Guidelines"), pertaining to the Redevelopment Area, were approved by the Commission on May 31, 1981, approved and revised by the Chicago Plan Commission on May 14, 1981 and as revised, were approved by the City Council on October 22, 1981, as further revised by the Commission on October 12, 1982, as so further revised and approved by the Chicago Plan Commission on October 14, 1982, and with additional revisions, were further approved by the City Council on October 27, 1982 and as further revised by the Commission on September 1, 1987, as so further revised and approved by the Chicago Plan Commission on September 2, 1987, and were further approved by the City Council on September 23, 1987, and as further revised by the Commission on January 24, 1989, as so further revised and approved by the Chicago Plan Commission on February 9, 1989, and were finally approved by the City Council on March 29, 1989. The TIF Plan and Project ("TIF Plan"), pertaining to the Redevelopment Area, was approved by the City Council pursuant to an ordinance duly adopted on June 20, 1984. The Plan, the Guidelines and the

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TIF Plan are collectively referred to herein as the "Redevelopment Documents".

D. The Redevelopment Documents set forth: (i) the City's general objectives for the Redevelopment Area; and (ii) certain specific planning and design criteria for the Redevelopment Area.

E. The City owns a certain parcel of real estate located within the Redevelopment Area in the block generally bounded by North Clark Street, North Dearborn Street, West Randolph Street and West Lake Street, legally described on Exhibit A attached hereto ("Site").

F. The Site is presently improved with two theaters commonly described as the Harris-Selwyn theatres ("Theaters") and designated as Chicago landmarks pursuant to that certain ordinance ("Theater Landmarks Ordinance") adopted by the City Council of the City on March 31, 1983 and recorded as document #265-5694.

G. The Site was acquired by Linpro (as hereinafter defined) and conveyed to the City pursuant to the terms of the Linpro Agreement (as hereinafter defined) in order to fulfill the Donative Intent of Linpro (as said term is defined in the Linpro Agreement) that the Theaters be devoted to the presentation of live theatrical, cultural and entertainment activities.

H. The City shall convey in fee simple the Site to Developer pursuant to the terms of the Agreement.

I. Developer and the City acknowledge that the implementation of the policies and provisions described in the

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Redevelopment Documents and the Agreement will be of mutual benefit to Developer and the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

## DEFINITIONS

For all purposes of the Agreement, each of the following terms shall have the respective meaning assigned to it as follows:

**Affirmative Action Plan:** That certain agreement entered into between the City and Developer on October 24, 1990, a copy of which is attached hereto as Exhibit C.

**Agreement to Provide Assistance to Other Theater Groups:** That certain agreement to be entered into between the City and Developer on October 24, 1990, a copy of which is attached hereto as Exhibit D.

**Block:** That certain block located in the City's Loop bounded by North Clark Street, North Dearborn Street, West Randolph Street and West Lake Street.

**Certificate:** The certificate of completion to be issued by the City pursuant to subsection 4.8 below.

**Commission:** The Commercial District Development Commission of the City of Chicago.

**Commissioner:** The Commissioner of the Department of Planning of the City of Chicago.

**Completion:** The substantial completion of the Project.

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Project shall be considered substantially complete when: (i) improvements and all common or public areas of the Project are substantially finished (but subject to insubstantial incomplete matters such as the correction of completion of "punch list items") and ready for use and occupancy for the purpose intended and, (ii) all public amenities described in exhibit F below (or commitments therefor in form and content satisfactory to the Commissioner have been delivered) are substantially finished and ready for use and occupancy for the purpose intended.

**Donative Intent:** The intent of Linpro in conveying the Site to the City on January 20, 1989 was and continues to be to allow for the utilization of the Theaters to a not-for-profit theatrical organization to the extent such organizational form continues to be viable, for the express purpose of substantially devoting the Theaters to the presentation of theatrical, cultural and entertainment activities.

**DOP:** City of Chicago Department of Planning.

**First Source Hiring Agreement:** That certain agreement entered into between the City and Developer executed on July 18, 1990, a copy of which is attached hereto as Exhibit E.

**General Contractor:** That contractor meeting the prior approval of the City hired by Developer as general contractor to undertake the completion of the Project.

**Inspector:** The independent inspector employed by the Escrowee and selected by the City and Developer pursuant to subsection 4.5(c)(7) below.

**Landmarks Commission:** The Commission on Chicago Landmarks of the City.

**Linpro:** Linpro Chicago Land Limited Partnership, an Illinois limited partnership.

**Linpro Agreement:** That certain redevelopment agreement known as "Block 35, North Loop, Redevelopment Agreement" entered into between the City and Linpro Chicago Land Limited Partnership dated November 1, 1988, and recorded on November 15, 1988 in the Office of the Recorder of Deeds of Cook County, Illinois as document #88527338, and any amendments thereto.

**MKDG Agreement:** That certain redevelopment agreement known as "Block 35, North Loop Project Redevelopment Agreement, Miller-Klutznick-Davis-Gray Co." executed by the City and Miller-Klutznick-Davis-Gray Co. on April 10, 1989, and recorded on April 20, 1989 with the Office of the Recorder of Deeds of Cook County, Illinois as document #89175465.

**Project:** The renovation of the Theaters and the construction of other improvements by Developer at the Site as described in the Agreement pursuant to the drawings, plans and specifications approved by the City in accordance with subsection 4.3 below.

**Redevelopment Documents:** the Redevelopment Plan, the TIF Plan and the Guidelines. The Redevelopment Documents shall include any revision made from time to time by the City, provided that no such revision shall: (i) alter the use of the Site for the purposes contemplated by the Agreement; (ii) substantially alter the schedule for construction of the Project; or (iii) impose additional substantial financial burdens on Developer.

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**Site:** That real property described in Exhibit A attached hereto.

**Subsequent Developer:** That certain entity which shall acquire the Site from the City in the event of a breach by Developer as more specifically described in subsections 5.3(d) and 5.3(e) below.

SECTION I

INCORPORATION OF RECITALS AND DEFINITIONS

The recitations and definitions set forth above constitute an integral part of the Agreement and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

SECTION II

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Developer.

To induce the City to execute the Agreement and perform the obligations of the City hereunder, Developer, hereby represents and warrants to the City as follows:

- (a) Developer is a duly organized and existing Illinois not for profit corporation in good standing under the laws of the State of Illinois.
- (b) No litigation or proceedings are pending, or to the best of Developer's knowledge, are threatened against Developer or any party affiliated with Developer whi

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could: (i) affect the ability of Developer to perform its obligations pursuant to and as contemplated by the terms and provisions of the Agreement and the Redevelopment Documents; or (ii) materially affect the operation or financial condition of Developer.

- (c) The execution, delivery and performance by Developer of the Agreement have not constituted or will not, upon the giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which Developer or any party affiliated with Developer is a party or may be bound or affected, or a violation of any law or court order which may affect the Site, any part thereof, any interest therein or the use thereof.
- (d) The parties executing the Agreement on behalf of Developer have been duly authorized by all appropriate action to enter into, execute and deliver the Agreement and perform the terms and obligations contained herein.
- (e) To the best of its knowledge, the use of the Site by Developer shall not violate: (i) any statute, law, regulation, rule, ordinance or executive or judicial order of any kind (including, without limitation, zoning and building laws, ordinances, codes or approvals and environmental protection laws or regulations); or (ii) any building permit, restriction

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of record or any agreement affecting the Site or any part thereof.

- (f) Except as otherwise provided in the Agreement, and specifically as described in subsection 4.5(b), Developer shall not, without the prior written consent of the DOP, which the DOP may withhold in its sole discretion: (i) grant, suffer or permit any lien, claim or encumbrance upon the Site or any portion thereof; (ii) permit or suffer any levy, attachment, claim or restraint to be made affecting the Site or any portion thereof; or (iii) enter into any transaction not in the ordinary course of business of Developer, which materially or adversely affects Developer's ability to pay its debts as such may then exist or mature.
- (g) Developer shall not discriminate based upon race, color, religion, sex, national origin or ancestry, age, handicap or sexual orientation in the use or occupancy of the Project or any improvements located or to be erected on the Site or any part thereof, and shall utilize the Project solely for those uses permitted by the terms of the Agreement, the Redevelopment Documents, or both.
- (h) Developer has agreed to comply with the terms of: (1) the Affirmative Action Plan; (2) the First Source Hiring Agreement; and (3) the Agreement to Provide

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Assistance to Other Theater Groups and the Chicago Board of Education.

- (i) Developer shall renovate the Theaters to preserve their historic and architecturally significant features in accordance with their status as a designated City landmark and in accordance with the Design Plans (as defined below) approved by the Landmarks Commission.
- (j) Developer agrees that the Theaters shall be devoted to the presentation of theatrical, cultural and entertainment activities.
- (k) Developer shall operate the Theaters in accordance with the standards of a first class live theatrical organization and shall possess full artistic freedom in the presentation of theatrical and cultural activities at the Theaters.

## 2.2 Representations and Warranties of the City.

To induce Developer to execute the Agreement and perform the obligations of Developer hereunder, the City hereby represents and warrants to Developer as follows:

- (a) The City has authority under its home rule powers granted in the Constitution of the State of Illinois to enter into, execute, and deliver the Agreement and perform the terms and obligations contained herein.
- (b) As of the date hereof, the City has good and merchantable fee title to the Site and the improvements located thereon, subject to those

permitted exceptions described in Exhibit G attached hereto.

## 2.3 Survival of Representations and Warranties.

Developer agrees that all of its representations and warranties, and the City agrees that all of its representations and warranties, set forth in this Section II or elsewhere in the Agreement are true as of the execution date of the Agreement and will be true at all times hereafter, except with respect to matters which have been disclosed in writing to and approved by the other party.

## SECTION III

### CONVEYANCE OF THE SITE

3.1 Form of Deed. The City shall convey to Developer fee simple title to the Site by quitclaim deed substantially in the form attached hereto as Exhibit B ("Deed"). The conveyance and title shall, in addition to the provisions of the Agreement, be subject to:

1. Covenants and restrictions set forth in the Deed, including, but not limited to, Developer's representations described in paragraphs (q)-(k) of subsection 2.1 above and the provisions described in subsections 4.11, 5.3(d) and 5.3(e) below.
2. The Redevelopment Documents affecting the Site.
3. The permitted exceptions in an Alta insurance policy described on Exhibit G attached hereto.

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4. Taxes for the current year.
5. Easements of record and not shown of record.
6. Such defects which cannot reasonably be cured but will not affect the use, marketability and insurability of the Site.
7. Title objections caused by Developer.

In addition, the Site shall be conveyed to Developer with no warranty, express or implied, by the City as to the condition of the soil, its geology, or the presence of known or unknown faults. It shall be the sole responsibility of Developer, at its sole expense, to investigate and determine the soil and environmental condition existing in the Site. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Site shall be utilized, then it shall be the sole responsibility and obligation of Developer to take such action as may be necessary to place the soil and environmental condition of the Site in a condition entirely suitable for the intended Project. Purchaser additionally agrees to indemnify and hold harmless the City from any claim relating to the soil and the environmental condition of the Site.

**3.2 Conveyance of the Site.** Subject to all the terms, covenants and conditions of the Agreement, the City shall convey to Developer the Deed to the Site upon the occurrence of all of the following:

- (a) approval by the DOP, Landmarks Commission and Linpro of Developer's Schematics and Design Plans (as defined in subsection 4.3 below); and



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- (b) approval by the DOP of Developer's Budget as defined in subsection 4.5(a) below and the deposit of Developer's Financial Contribution in the Escrow as described in subsection 4.5 below; and
- (c) the obtaining by Developer of insurance policies insuring the Theaters as more fully described in subsection 4.10 below; and
- (d) the approval by the DOP and Linpro of a public information program regarding the contribution of both the City and Linpro to establishment of the theater program at the Theaters.

If the conditions described in this subsection 3.2 are not achieved by Developer within eighteen (18) months of the execution date of the Agreement, then the Agreement, at the option of the City, shall become null and void and the City shall be under no further obligation to Developer.

**3.3 Closing Documents.** At the closing for the Site, the parties shall deliver to each other the following:

- (i) Developer's documents:
  - (a) A certificate of good standing as an Illinois not for profit corporation and a certificate of incumbency for Developer.
  - (b) A corporate resolution from Developer authorizing the acceptance of the conveyance.
  - (c) An ALTA statement.

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(ii) The City's documents:

(a) The Deed.

(b) A certified copy of the ordinance adopted by the City Council of the City authorizing the City to enter into and perform the Agreement and to execute the Agreement and all other documents necessary to carry out the transactions provided for in the Agreement.

(c) An ALTA statement.

(d) Evidence from the Water Department of the City disclosing that all water bills are paid or have been waived.

3.4 Title Insurance. Upon the conveyance of the Site by the City to Developer, the City, at Developer's sole expense, shall provide to Developer, a policy of title insurance from the Chicago Title Insurance Trust Company or other title company mutually agreeable to the parties ("Title Company"), consisting of an Owner's Policy ALTA form B (1987), dated as of the date of conveyance of the Site to Developer, insuring the title of Developer with regard to the Site, subject only to the reservations and exceptions provided in this Section III. Developer, at Developer's sole expense, may obtain such endorsements as it may require. The City agrees to use reasonable efforts to assist Developer in the obtaining of said endorsements.

3.5 Real Estate Taxes. The City shall take all appropriate steps to secure the waiver of general real estate taxes to the

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date of delivery of the Deed. Developer shall be responsible for real estate taxes accruing after the conveyance of said Deed.

**3.6 Recordation of Deed.** Developer shall promptly file the Deed for recordation with the Office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office"). Developer shall pay all such recording costs.

**3.7 Joinder Agreement.** Concurrent with the acquisition of the Site by Developer from the City, Developer shall also acquire from Linpro fee simple title to that certain 1 x 183 strip of land adjacent and to the west of the Theaters ("Strip") as well as all of Linpro's reversionary rights to that certain north-south alley located to the west of and adjacent to the Strip ("Alley"). Upon the acquisition of the Strip and Linpro's reversionary rights to the Alley, Developer shall take all appropriate steps to seek passage of an ordinance by the City Council of the City vacating the Alley.

Upon the vacation of the Alley by the City, Developer shall record one copy of the vacation ordinance with the Recorder's Office. Thereafter, Developer shall enter into a joinder agreement ("Joinder Agreement") with the City whereby Developer shall agree to develop the Alley and the Strip in conjunction with the Site and consistent with the purposes of the Agreement. Upon the execution of the Joinder Agreement by the parties, the Alley and the Strip shall be considered part of the "Site" as such term is defined in the Agreement. Developer shall promptly record one original Joinder Agreement with the Recorder's Office.

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SECTION IV

RENOVATION OF THE THEATERS AND  
THE CONSTRUCTION OF OTHER PROJECT IMPROVEMENTS

4.1 Generally. Developer agrees that the Project shall be devoted to: (1) the renovation or rehabilitation of the Theaters to preserve their historic and architecturally significant features in accordance with their status as a designated City landmark and in accordance with the Design Plans approved by the Landmarks Commission, and (2) the construction of improvements affecting the north half of Couch Place as more fully described in subsection 4.9(a) below. The Project shall be constructed in accordance with the Schematics and Design Plans (as defined in subsection 4.3 below) submitted by Developer pursuant to the procedures described in subsection 4.3 below. Developer further agrees that the Theaters shall be substantially devoted to the presentation of live theatrical, cultural and entertainment activities.

4.2 Right of Entry. Within seven (7) days of the execution date of the Agreement, the City shall grant to Developer a right of entry to the Site for the purpose of allowing Developer's architects and engineers to inspect the Site and to investigate the soil and the environmental condition existing in the Site. From such inspections, Developer shall prepare its Schematics and Design Plans (as defined in subsection 4.3 below) as well as the written budget described in subsection 4.5(a) below.

4.3 Submission of Renovation and Construction Documents. Within nine (9) months from the execution date of the Agreement,

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Developer shall deliver to the City schematic drawings ("Schematics") for review and approval by the Landmarks Commission, Linpro and the DOP describing the proposed renovation and rehabilitation of the Theaters and the completion of other Project improvements to be constructed at the Site. Developer shall notify the Landmarks Commission and the DOP at least thirty (30) days prior to the submission of the Schematics to the Landmarks Commission and the DOP. Upon receipt of written notice from the Landmarks Commission describing its approval of the Schematics, the DOP shall have sixty (60) days in which to approve or reject the Schematics. If the DOP rejects the Schematics, Developer shall have ninety (90) days in order to prepare plans consistent with the requirements of the DOP and resubmit them to the DOP for approval.

Within ninety (90) days of the date from which the DOP approves the Schematics, Developer shall submit to the Landmarks Commission and the DOP its final design development drawings and specifications ("Design Plans") consistent with the Schematics. The Design Plans shall conform to the terms of the Agreement, the Redevelopment Documents as amended from time to time, and all applicable state and local laws, ordinances and regulations.

Developer shall notify the Landmarks Commission and the DOP at least thirty (30) days prior to the submission of the Design Plans to the Commission and the Department. Upon receipt of written notice from the Landmarks Commission describing its approval of the Design Plans, the DOP shall have sixty (60) days in which to approve or reject the Design Plans. If the DOP

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rejects the Design Plans, Developer shall have ninety (90) days in order to prepare plans consistent with the requirements of the DOP and resubmit them to the DOP for approval.

Any material amendment to the Design Plans must be submitted to the Landmarks Commission and the DOP for their approval, which approval shall not be unreasonably withheld or delayed.

**4.4 Limited Applicability of DOP's Approval.** Any approvals of the Schematics and the Design Plans made by the DOP are for the purposes of the Agreement only and do not affect or constitute approvals required for building permits or approvals required pursuant to any other ordinance of the City, nor does any approval by the DOP pursuant to the Agreement constitute approval of the quality, structural soundness or the safety of the improvements constituting the Project. The City, however, agrees to assist Developer in expeditiously obtaining approvals for building permits and driveways affecting the Project. Developer agrees to notify the DOP within five (5) days of the issuance of the building permit by the City's Department of Inspectional Services.

**4.5 Financing the Project.**

(a) **Budget and Financial Contribution.** Within nine (9) months of the execution date of the Agreement, or within three (3) months after the DOP approves the Design Plans, whichever is later, Developer shall deliver to the DOP for its approval a written budget ("Budget") setting forth the projected and anticipated development costs with regard to the rehabilitation of the Theaters and the construction of other Project

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improvements as described in subsection 4.9(a) below based upon architectural and engineering studies undertaken by Developer with regard to the Theaters and the Site. The Budget shall also contain a description disclosing in sufficient detail the sources of funds that Developer shall contribute to pay such costs ("Developer's Financial Contribution"). Developer shall primarily rely on fundraising efforts from public and private sources in order to make its Financial Contribution.

Concurrent with the execution of the Agreement by the parties, the City shall accumulate funds with regard to: (1) the renovation and rehabilitation of the Theaters, and (2) the construction of other Project improvements as described in subsection 4.9(a) below.

Within seven (7) days of the execution of the Agreement, the City shall deposit the sum of One Million and no/100 Dollars (\$1,000,000) in an escrow held by an institutional escrowee described in subsection 4.5(c) below to be used toward the renovation or reconstruction of the Theaters. Prior to the commencement of the renovation or reconstruction of the Theaters, the City shall deposit with the escrowee the additional sum of Two Million and no/100 Dollars (\$2,000,000) and furthermore match, on a dollar-per-dollar basis up to Three Million and no/100 Dollars (\$3,000,000), any sums raised by Developer with regard to said renovation or reconstruction in excess of Three Million and no/100 Dollars (\$3,000,000); provided, however, the City's contribution for the renovation or reconstruction of the Theaters shall in no event exceed Six Million and no/100 Dollars.

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(\$6,000,000) ("City's Financial Contribution") in the aggregate. The City's Financial Contribution shall be deposited in the escrow described in this paragraph. If the hard costs described in the Budget exceed Twelve Million and no/100 Dollars (\$12,000,000), Developer shall be solely responsible for the raising of additional sums in order to meet the projected Project costs.

If the parties determine that Developer's fundraising efforts have proven insufficient with regard to fulfilling Developer's Financial Contribution toward completion of the Project, Developer shall be permitted to obtain a mortgage loan ("First Mortgage") from a reputable financial institution or other lender which is in good standing with the State of Illinois, and satisfactory to the City in its sole discretion. Developer shall deliver to the City evidence of a commitment for adequate financing ("Commitment"), specifying the amount of the loan, length of the term and the applicable interest rate. The terms of the Commitment shall be subject to the approval of the City. Notwithstanding the provisions contained in this paragraph or in the Agreement, Developer shall be permitted to obtain a First Mortgage in an amount not to exceed total Project costs minus the City's Financial Contribution and the Developer's Financial Contribution.

(b) Mortgage. Concurrent with the deposit of the City's Financial Contribution in the Escrow, Developer shall execute and deliver to the City that certain mortgage ("Mortgage") and mortgage note ("Mortgage Note") in substantial conformity with



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Exhibits H and I, respectively, attached hereto. The Mortgage Note shall be dated as of the date of its delivery to the City. In accordance with the terms of the Mortgage Note, Developer shall be obligated to repay to the City the sum of the City's Financial Contribution plus interest at the statutory judgment rate to be calculated commencing with the date of the Mortgage Note solely in the event Developer fails to obtain from the City the Certificate with regard to the completion of the Project.

Developer agrees that the Mortgage shall be a direct lien and security interest upon the Site. Developer shall not create or suffer any lien prior to or in parity with the lien of the Mortgage other than the lien created by the First Mortgage described in subsection 4.5(a) above.

(c) Construction Escrow. The Developer's Financial Contribution and the City's Financial Contribution shall be deposited in an escrow account ("Escrow") held by an institutional escrowee ("Escrowee") mutually acceptable to the parties. The respective rights, liabilities and duties of the Escrowee, as well as the purposes for which disbursements may be made from the Escrow and the terms and conditions upon which the same can be made, are contained in the Agreement. The parties agree that if any conflict exists between the terms of the Agreement and any escrow instructions or other documents affecting the Escrow, the terms and provisions of the Escrow shall govern.

1. Permitted Disbursements. At the request of and on behalf of Developer, the Escrowee, pursuant to the terms of the

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Agreement, shall through disbursements from the Escrow (on a pro rata basis utilizing Developer's Financial Contribution and the City's Financial Contribution) pay directly to the contractor or vendor of Developer or any payee designated by Developer (except to the Developer itself or any affiliate or other entity or individual related directly or indirectly to Developer) for the following eligible costs:

- (a) architectural and engineering services; and
- (b) expenses of rehabilitating or renovating the Theaters; and
- (c) any other bona fide development costs or services

2. Conditions Precedent to Disbursement. Prior to the initial disbursement of funds from the Escrow by the Escrowee, Developer shall deliver to the Escrowee and the Inspector the following documents:

- (a) the Design Plans approved by the City, Linpro and the Landmarks Commission pursuant to subsection 4.3 above;
- (b) Developer's written budget as described in subsection 4.5(a) above;
- (c) a mortgage title commitment or policy showing:
  - (i) the Mortgage as constituting a lien on the Site, and (ii) those permitted exceptions as approved by the City;
- (d) a final plat of survey certified by a licensed engineer showing all easements, encroachments and

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- containing a legal description of the Site;
- (e) a building permit issued by the City;
  - (f) satisfactory proof that policies of insurance as referred to in subsection 4.10 below have been obtained by Developer and are in full force;
  - (g) contracts covering completion of the Project, as approved by the City;
  - (h) labor, material and performance bonds affecting any contractor issued by a company acceptable to the City in its sole discretion;
  - (i) Internal Revenue Service taxpayer identification numbers for Developer; and
  - (j) such other documents required of Developer by the City or the Escrowee.

3. Disbursements. Disbursements from the Escrow covering the Project costs described in paragraph (1) of this subsection 4.5(c) shall be made by the Escrowee, upon receipt of the prior approval of the Inspector, in the following manner:

(a) Method. Subject to the provisions of the Agreement, the Escrowee shall disburse directly to a contractor, subcontractor, vendor and any other persons as have actually supplied labor, materials or services in connection with the renovation or rehabilitation of the Theaters.

(b) Holdback Provision. The Escrowee may hold back on each request for advance for payment covering the costs described in paragraph (1) above of this subsection 4.5(c) an amount equal to ten percent (10%) of the requested sum until fifty percent of the

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Project is completed, and thereafter five percent (5%) of the requested sum until the City issues its Certificate with regard to completion of the Project.

(c) Final Disbursement. Subject to the provisions of the Agreement, and as long as Developer is not in default in the due, prompt and complete performance or observance of any of its covenants or obligations contained in the Agreement, the Mortgage Note and the Mortgage, the final disbursement of the Escrow constituting the holdback portion referred to above shall be made by the Escrowee when Developer has completed the Project to the satisfaction of the Inspector (as evidenced by written notice thereof from the Inspector to the Escrowee) and received the Certificate from the City, and provided that Developer has submitted to the Escrowee and the Inspector affirmative proof that no materialmen's liens or claims or liens exist affecting the Site due to any rehabilitation of the Theaters or construction of Project improvements. Any sums thereafter remaining in the Escrow shall be disbursed pursuant to applicable provisions of the Agreement.

(d) Request for Advances. Concurrently with the request for any disbursement from the Escrow, Developer shall furnish to the Escrowee and the Inspector, separately with respect to each disbursement request, a Request for Advance upon the form attached hereto as Exhibit J duly signed with all blanks appropriately filled in setting forth such details concerning the costs contained therein as the Escrowee and the Inspector shall require, including: (a) a detailed breakdown of percentages and costs of various phases of the rehabilitation of the Theaters

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showing the amounts expended to date for such rehabilitation and the amounts then due and unpaid, an itemized estimate of the amount necessary to complete the rehabilitation of the Theaters in its entirety and also containing certification by Developer and its architect that the rehabilitation of the Theaters to date of such certificate complies with the Design Plans; (b) if requested by the Escrowee, the Inspector, or both, a list of the names and addresses of all material dealers, laborers and subcontractors with whom agreements have been made by Developer and the General Contractor; (c) if requested by the Escrowee, the Inspector, or both, receipted invoices, and/or releases or waivers of lien on forms approved by the Escrowee and the Inspector (substantially in the form of Exhibit K attached hereto) from each material dealer, contractor and subcontractor who has done work or has furnished materials for the Project, including but without limitation, those covered by each such Request for Advance; and (d) a Project Cost Analysis substantially in the form attached hereto as Exhibit L. If work on the Site has begun prior to the initial disbursement, then Developer shall provide the Escrowee and the Inspector with all such items as aforesaid, and/or acknowledgement of receipt of payment for work or materials previously provided, and any additional items as the Escrowee and the Inspector may require prior to such initial disbursement.

4. Compliance with Conditions Precedent. Each request for disbursement from the Escrow submitted by Developer shall be subject to compliance to the satisfaction of the Escrowee and --

Inspector, in both form and substance, with the applicable conditions precedent for disbursements as set forth in the Agreement.

5. Non-Requisitioned Disbursements or Holdbacks. In the event that, in the sole judgment of the Inspector reasonably exercised, Developer is not timely submitting requisition for payment of items permitted to be paid under the Agreement, the Escrowee shall provide Developer with written notice thereof, which written notice shall specify with particularity the items or categories of items for which the payment is due. Should Developer thereafter fail to submit to the Escrowee and the Inspector either a written requisition for payment of any such items in the form herein prescribed or an explanation in writing completely acceptable to the Inspector and the Escrowee explaining in sufficient detail why payment of such items has not been requested, within five (5) business days of Developer's receipt of notice from the Escrowee, then the Escrowee, upon written notice from the Inspector, shall be authorized (but not obligated) to make payment of all such items from the Escrow, notwithstanding Developer's failure or refusal to request same; provided, however, that should the Escrowee and the Inspector consent to Developer's nonpayment of any such item pursuant to Developer's written explanation submitted in accordance with this paragraph, and should the claimant for any such item file a mechanic's or other lien on the Project by reason of such nonpayment, then promptly upon demand by the Escrowee, the Inspector, or both, the Developer shall post such bond or

otherwise effect the removal of any such lien from the Project in a manner satisfactory to the Escrowee, the Inspector and the Title Company; Developer's failure to remove any such lien in accordance with the Agreement shall constitute a default under the Agreement.

6. Time for Payment of Requisitions. Upon receipt of a Request for Advance by the Escrowee, the Escrowee shall have ten (10) business days in order to effect such advance.

7. Inspection. During the renovation or rehabilitation of the Theaters, the Escrowee shall employ, for the benefit of the Escrowee, the City and Developer but at the sole expense of Developer, an inspector or architect ("Inspector") selected by the City and Developer (other than the architect who prepared the Schematics, the Design Plans, or both) to review for the parties all renovation and rehabilitation activities undertaken with regard to the Theaters, which Inspector shall certify or otherwise indicate to the Escrowee on the form attached hereto as Exhibit M that the renovation or rehabilitation of the Theaters to the date of each Request for Advance and certificate of Developer is as set forth in said Request for Advance and certificate, and that such rehabilitation complies with the Design Plans, such indication from the Inspector to be a condition precedent to the approval by the Escrowee of any submitted Request for Advance of Developer. The Inspector's approval, if initially verbal, shall be followed by a written confirmation of approval of the draw request; provided, however, that the Inspector's written approval shall not be a condition

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precedent for disbursement if waived by the Escrowee. The Escrowee, at its option, may pay all reasonable fees for inspections submitted for payment by the Inspector from Developer's Financial Contribution without the consent or signature of Developer.

8. Disbursements; Deficiencies. The Escrowee shall pay any and all such disbursements directly to the General Contractor or such person as have actually supplied labor, materials, property or services in connection with or incidental to the renovation or rehabilitation of the Theaters. In no event shall the Escrowee be required to disburse any amount which, in the Inspector's opinion, shall reduce the undisbursed amount of the Escrow below the amount necessary to pay for the balance of the work, labor and materials necessary to fully complete the Project. If at any time it shall appear to the Inspector that the undisbursed portion of the Escrow (taking in account the holdbacks) is insufficient to pay remaining renovation or rehabilitation costs as aforesaid plus a reasonable contingency reserve, then in such event, Developer shall forthwith, upon ten (10) days' written notice, deposit with the Escrowee the amount that the Inspector, in its sole opinion, deems to be such deficit. It is expressly understood and agreed that, absent an express waiver by the Inspector, no construction disbursement shall be made by the Escrowee. In the event that at any time the Escrowee demands that Developer to remedy any such deficiency and Developer shall fail to do so as aforesaid, then the Escrowee shall have no further obligation to make further disbursement until said



deficiency is remedied. In the event the Escrowee and the Inspector shall require and Developer shall provide any sums to remedy deficiencies as aforesaid, the Escrowee shall hold said sums in a separate account established for such purpose, and such funds shall not be commingled with the proceeds of the Escrow or, at the sole option of the Escrowee, the Escrowee may apply all or any portion of such deposit to payment of the submitted Request for Advance. Developer's failure to remedy any deficit as aforesaid shall constitute a default on the terms of the Agreement.

9. Investment of Escrow Funds. Any funds deposited by the City in the Escrow shall be invested or reinvested to the extent permitted by law by the Escrowee at the written request of the City. Any interest received upon said investment of escrow funds shall be paid to the City.

(d) Contractor's and Subcontractor's Contracts; Performance Bonds. On or before one (1) month prior to the commencement of the rehabilitation of the Theaters, Developer shall deliver to the City any and all executed contracts between Developer and the General Contractor and prime contractors or other evidence of such contracts reasonably satisfactory to the Commissioner. In addition, the General Contractor shall be required to deliver to the City a performance bond designating the City as beneficiary in an amount no less than the amount of construction costs as reflected in the construction contract between Developer and the General Contractor, insuring the renovation and rehabilitation in accordance with the Design Plans and consistent with the

provisions of the Agreement. Said performance bond shall be issued by a reputable company satisfactory to the DOP in its sole discretion.

**4.6 Relocation of Utilities.** In the event Developer requests the relocation, repair or replacement of any existing City utility lines in and under the Site, the public streets or private property adjacent to the Site, Developer agrees to cause such utilities to be relocated at Developer's sole expense. The DOP shall use its best efforts to assist Developer in obtaining the cooperation of any City agency with regard to the relocation, repair or replacement of existing utility lines. Under no circumstances shall the City be financially responsible for the relocation, repair or replacement of any utility lines as a result of the Agreement.

**4.7 Commencement and Completion of the Project.** Developer shall commence the rehabilitation of the Theaters and the construction of other Project improvements upon the conveyance of the Site by the City to Developer. Except as otherwise provided in the Agreement, Developer shall complete the Project within thirty (30) months after the issuance of a building permit by the City. Developer agrees for itself, its successors and assigns, that Developer, its successors and assigns, shall promptly begin and diligently complete the Project within the time period specified in this subsection 4.7.

**4.8 Certificate of Completion.** As the Project is completed in accordance with the approved Design Plans, the Agreement and the Redevelopment Documents, the City, upon written request by Developer, shall furnish Developer with an appropriate

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Certificate. The Certificate shall be a conclusive determination of satisfaction and termination of the covenants in the Agreement with respect to the obligations of Developer and its successors and assigns to complete the Project. The Certificate, however, shall not constitute evidence that Developer has complied with any applicable provisions of federal, state and local laws, ordinances and regulations with regard to the completion of the Project. The Certificate shall be in recordable form. Upon written request by Developer for the Certificate, the City shall, within thirty (30) days after receipt of the same, undertake an inspection of the Site and thereafter provide Developer either with the Certificate or a written statement indicating in adequate detail how Developer has failed to complete the Project in conformity with the Redevelopment Documents, the Agreement and the Design Plans, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the City, for Developer to perform in order to obtain the Certificate. Developer shall have ninety (90) days to correct any such nonconformity or default. Upon compliance with the City's requirements, Developer shall resubmit a written request for a Certificate from the City.

#### **4.9 Developer's Contribution.**

(a) **Couch Place Improvements.** Developer shall incorporate in its Schematics and Design Plans a description of the type of improvements Developer plans to construct on the north half of Couch Place. Said improvements shall be approved by the Commissioner, Linpro and MKDG, and be consistent with the requirements and objectives for the development of Couch Place as

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more fully described in section 3.10 of the Linpro Agreement, as amended, and section 3.10 of the MKDG Agreement, which are both incorporated herein by this reference.

Notwithstanding anything contained in the Agreement to the contrary, in the event that Developer, the City, Linpro and MKDG do not agree on the design and costs related to the Couch Place improvements anticipated in this section 4.9, then in such event, Developer's liability for the costs to be so incurred for the finishes to be installed on the southern exterior of the Theaters and adjacent sidewalks and alley, penetrations, drainage, and electrical fixtures, including lighting, shall not exceed the sum of Seventy Five Thousand and no/100 Dollars (\$75,000.00).

(b) Agreement to Provide Assistance to Other Theater Groups. Developer has entered into an agreement with the City dated October 24, 1990, a copy of which is attached hereto as Exhibit D, whereby Developer shall commit to six hundred (600) hours of technical assistance to be offered to neighborhood theater groups and the Chicago Board of Education. Said technical assistance hours must be contributed by Developer within five (5) years of the execution date of the Agreement.

#### 4.10 Insurance.

(a) Theaters. Within ten (10) days prior to the date of delivery of the Deed by the City to Developer, Developer shall obtain and deliver to the City at Developer's sole expense, a policy or policies of comprehensive liability and fire insurance in an amount not less than its full insurable value, insuring the Theaters against any damage or destruction by reason of fire, hazard, catastrophe, vandalism or malicious mischief. The City

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shall be named as an additional insured. Said policy shall be issued in such form, in such amount and by such companies as have been approved by the DOP in its sole discretion. Each such policy shall contain an affirmative statement by the insurer to deliver written notice to the City at least thirty (30) days prior to any cancellation or amendment of its policy. As said insurance coverage is increased in accordance with the increase in value of the Theaters during their rehabilitation, Developer shall provide the City with a copy of any and all "down date" insurance policies. Said insurance shall remain in effect until the City issues its Certificate with regard to completion of the Project.

In the event of any damage or destruction to the Theaters caused by fire or other hazard, the insurance proceeds shall be utilized toward the renovation and rehabilitation of the Theaters; provided, however, that if the Theaters are destroyed beyond repair, the Deed to the Site shall be conveyed by Developer to Linpro pursuant to the terms of the Linpro Agreement. If the Theaters are destroyed beyond repair prior to the issuance by the City of the Certificate, Developer, the City, Linpro and MKDG shall divide the insurance proceeds on the basis of their respective financial contributions in relation to the total Project costs; provided, however, that Linpro shall not be entitled to any distribution of insurance proceeds unless Linpro makes a financial contribution (other than the donation of the Site) toward completion of the Project. If the Theaters are destroyed beyond repair subsequent to the issuance by the City of the Certificate, then the insurance proceeds shall be distributed

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in the following order: (1) Developer shall be entitled to a reimbursement of all of its reasonable Project costs (as allowed in section 4.5(c)(1) above and as certified by the Escrowee and the Inspector pursuant to the Escrow described in subsection 4.5(c) above, (2) the City shall be reimbursed for its Financial Contribution, (3) Linpro and MKDG shall be reimbursed based on their respective contributions with regard to the renovation of the Theaters, and (4) any remaining sums not utilized in (1)-(3) above in this paragraph shall be distributed to the City, Developer, Linpro and MKDG on a pro-rata basis determined by each parties' respective contribution expended on the renovation of the Theaters and the redevelopment of the Site.

(b) Liability Insurance. Prior to the commencement of the rehabilitation of the Theaters, Developer or the General Contractor shall obtain and deliver to the City at Developer's or the General Contractor's expense, and shall maintain in full force and effect until each and every obligation of Developer contained in the Agreement has been fully paid or performed, a policy or policies of comprehensive liability insurance, and during any period of rehabilitation or construction, contractor's liability insurance and contractor's liability and workmen's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than Two Million and no/100 Dollars (\$2,000,000.00) each occurrence and Five Million and no/100 Dollars (\$5,000,000.00) total. Such insurance policies shall be in such form and issued by such companies as have been approved in writing by the City to protect the City and Developer against any liability incidental to the use of or

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resulting from any accident occurring at or about the Site. Each such policy shall contain an affirmative statement by the insurer to deliver written notice to the City at least thirty (30) days prior to any cancellation or amendment of its policy. Said insurance shall remain in effect until the City issues its Certificate with regard to completion of the Project.

#### 4.11 Prohibition against Unpermitted Encumbrances.

Prior to the completion of the Project as certified by the City, neither Developer nor any successor in interest to the Site shall engage in any financing or other transaction the effect of which creates an encumbrance or lien upon the Site; provided, however, that Developer, after receiving the prior written consent of the City, shall be permitted to obtain financing solely to obtain the First Mortgage as described in subsection 4.5(a) above to the extent necessary for completing the Project.

#### 4.12 Mortgagees Not Obligated to Construct.

Notwithstanding any of the provisions of the Agreement, the holder of any mortgage or its affiliate authorized by the Agreement (including any holder who obtains title to the Site or any part thereof as a result of foreclosure proceedings, or action in lieu therefor, but not including; (a) any other party who thereafter obtains title to the Site or such part from or through such holder, or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself or its affiliate) shall not be obligated by the provisions of the Agreement to construct or complete the construction of the Project or to guarantee such construction or completion. Nothing in this subsection 4.12 or any section of the Agreement shall be

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deemed or construed to permit or authorize any such holder or its affiliate to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or permitted in the Redevelopment Documents and the Agreement.

Whenever the City shall deliver a notice or demand with respect to any breach or default by Developer of its obligations under the Agreement, the City shall at the same time forward a copy of such notice or demand to any mortgagee whose address has been given in writing to the City. After any such default by Developer, the City and each mortgagee shall (insofar as the City is concerned) have the right, at the mortgagee's option, to remedy such default.

Whenever the mortgagee shall deliver a notice or demand to Developer with respect to any breach or default by Developer of its obligations under the Agreement, the mortgagee shall at the same time forward a copy of such notice or demand to the City at the addresses listed in subsection 7.10 below. After any such default by Developer, the City and each mortgagee shall have the right to remedy such default.

## SECTION V

### PERFORMANCE

5.1 Time of the Essence. Time is of the essence of the Agreement.

5.2 Permitted Delays. Neither the City, Developer, or any successor in interest to Developer, shall be considered in breach



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of its obligations with respect to the commencement and completion of the Project in the event of delay in the performance of such obligations due to unforeseeable causes beyond such party's control and without such party's fault or negligence, including but not limited to, any delays or halts in renovation of the Theaters or construction of other Project improvements, which are compelled by court order, acts of God, acts of the public enemy, acts of the United States, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of subcontractors due to such cause. The time for the performance of the obligations shall be extended only for the period of the enforced delay if the party seeking the extension shall request it in writing of the other party within twenty (20) days after the beginning of any such delay.

## 5.3 Breach.

(a) Generally. Except as otherwise provided in the Agreement, in the event of default by any party or its successor in interest in the performance of its obligations under the Agreement, such party or successor, upon written notice from the other, shall proceed to immediately cure or remedy such default but, in any event, not later than sixty (60) days after receipt of such notice. In the event such action is not diligently pursued or the default not cured within a reasonable time, the aggrieved party may institute such proceedings at law or in equity as may be necessary or desirable in its sole discretion to cure and remedy such default, including but not limited to,

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proceedings to compel specific performance by the party in default of its obligations.

(b) Event of Default. For purposes of the Agreement, the occurrence of any one or more of the following shall constitute an "event of default":

- (1) If, at any time, any warranty, representation or statement made or furnished by Developer (including the representations and warranties of Developer described in subsection 2.1 above) is not true and correct in any material respect; or
- (2) If any petition is filed by or against Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereinafter existing (and in the case of involuntary proceedings, failure to cause the same to be vacated, stayed or set aside within thirty (30) days after filing); or
- (3) Failure of Developer to develop Design Plans consistent with the procedures outlined in subsection 4.3 above with regard to the construction of the Project at the Site; or
- (4) If Developer defaults in fulfilling its obligations with respect to the completion of the Project (including the nature of and the dates of the beginning and completion thereof) or abandons or substantially suspends renovation or construction work, and such default, violation, abandonment or suspension shall not be cured, ended or remedied

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- within thirty (30) days of the date Developer receives written demand by the City to cure such default; or
- (5) Failure of Developer, consistent with the Donative Intent, to devote and use the Theaters solely for the presentation of theatrical, cultural and entertainment activities; or
  - (6) Failure of Developer to pay real estate taxes or assessments affecting the Site or any part thereof when due, or placing thereon any encumbrance or lien unauthorized by the Agreement, or suffering any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Site or any part thereof, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal or discharge within sixty (60) days after written demand by the City to remove such lien or encumbrance; or
  - (7) Default by Developer in the payment of any sums required to be paid by Developer pursuant to the Agreement, the First Mortgage Note or the Mortgage Note, at the times specified therein or as a consequence of redemption or acceleration; or
  - (8) The occurrence of an event of default within the context of the First Mortgage or the Mortgage; or
  - (9) Any assignment, pledge, encumbrance, transfer,

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hypothecation or other disposition is made in violation of subsection 7.2 below.

(c) Prior to Conveyance. If, from the execution date of the Agreement until the City conveys to Developer the Deed to the Site, Developer or its successor in interest defaults in any specific manner as described in paragraph (b) of this subsection 5.3, and after the delivery of notice of default pursuant to subsection 5.3(a), the City may immediately terminate the Agreement and institute any action or proceeding at law or in equity against Developer.

(d) After Conveyance Until Issuance of Certificate. If, subsequent to the conveyance of the Site to Developer by the City until the City issues its Certificate, Developer or its successor in interest shall default in any specific manner as described in paragraph (b) of this subsection 5.3, then the City, by written notice to Developer, and after reasonable opportunity to cure, may declare the unpaid principal of the Mortgage Note and the interest accrued thereon to be due and payable immediately upon any such declaration. In addition, the City shall have the right to re-enter and take possession of the Site, to terminate the estate conveyed by the Deed to said Site to Developer as well as Developer's right of title and all other rights and interests in and to the Site conveyed by the Deed to Developer, and re-vest title in said Site with the City; provided, however, that such condition subsequent and the re-vesting of title as a result thereof in the City shall always be limited by, and shall not defeat, render invalid, or limit in any way, the lien of the

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First Mortgage authorized by the Agreement for the protection of the holders of the First Mortgage.

Upon the revesting in the City of title to the Site as provided in this subsection 5.3(d), the City may utilize proceeds from the performance bond described in subsection 4.5(d) above to complete the rehabilitation of the Theaters and the construction of other Project improvements, including, if necessary, the hiring of an alternative contractor to complete the Project. Upon completion of the Project, the City shall employ its best efforts to convey the Site (subject to the mortgage liens described above), in accordance with all applicable federal, state and local laws, ordinances and regulations and consistent with the objectives of the Redevelopment Documents and the Donative Intent. The Site shall be conveyed to a Subsequent Developer who is a qualified and financially responsible party or parties as determined by the City and Linpro and who shall assume the obligation of: (1) completing the Project to the satisfaction of the City and Linpro and in accordance with the uses specified for the Site in the Redevelopment Documents and consistent with the Donative Intent, and (2) paying the unpaid principal of the First Mortgage and the interest accrued thereon due and payable as of the date of the conveyance of the Site by the City. If the City sells the Site to the Subsequent Developer, the proceeds from said sale shall be utilized and distributed in accordance with the provisions described in subsection 5.3(f) below.

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(e) After Issuance of Certificate. 9 0 5 3 2 2 0 8

If Developer seeks to abandon the Site due to its inability to utilize the Site for uses consistent with the Redevelopment Documents and the Donative Intent for whatever reason except bankruptcy, the fee title to the Site shall automatically revert to the City upon receipt by the City of written notice of the intention of Developer to discontinue use of the Site. The fee title to the Site shall also revert to the City upon the receipt of written notice by Developer from the City that Developer has failed to utilize the Site for uses consistent with the Redevelopment Documents and the Donative Intent.

Within thirty (30) days upon the reversion of fee title of the Site with the City, a committee comprised of the City, Linpro, MKDG and Developer ("Disposition Committee") shall be established with regard to the disposition of the Site from the City to a Subsequent Developer in accordance with the terms of the Agreement. The Disposition Committee shall choose the Subsequent Developer to develop and utilize the Property. In selecting the Subsequent Developer, the Disposition Committee shall consider not only the financial capability of the proposed entity to undertake the renovation of the Theaters but also its demonstrated ability to utilize the Theaters for uses consistent with the Landmarks Ordinance, the Redevelopment Documents and the Donative Intent. If the Disposition Committee is unable to select a Subsequent Developer based on the above criteria within four (4) months subsequent to the date upon which the Disposition Committee initially convenes, then the Disposition Committee

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shall select a Subsequent Developer which is able to develop the Site for alternative uses acceptable to the Disposition Committee and consistent with applicable law.

Each party of the Disposition Committee shall select one representative. The parties shall receive a weighted vote in accordance with their respective contributions expended on the acquisition of the Site, the renovation of the Theaters and the redevelopment of the Site. The unanimous consent of the parties shall not be required in order to select the Subsequent Developer; excepting, however, that the City and Linpro must be in agreement concerning said selection.

In the event that the Disposition Committee fails to select a Subsequent Developer within eight (8) months from the date upon which the Disposition Committee initially convenes, the parties agree to mediate the impasse. The mediator shall be selected by the Mediation Research and Education Project, Inc. (MREP), the selection to be subject to the mutual agreement of the parties.

Proceedings before the mediator shall be informal. The mediator shall have the authority to meet separately with any party, but shall not have the authority to compel the selection of the Subsequent Developer. If no agreement is reached as a result of the efforts of the mediator within thirty (30) days after the selection of the mediator, the parties may agree to arbitration of the impasse solely in the event that the City, Linpro, or both, make a written request to the Disposition Committee to arbitrate. The fees and expenses of the mediator shall be divided equally between the parties.

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In the event that the parties decide to arbitrate, the arbitrator shall be selected from a list of arbitrators. Each party shall propose a roster of five (5) arbitrators familiar with the City of Chicago and possessing education and experience in real estate commercial law and zoning law. The arbitrator shall be selected by mutual agreement of the parties based on each parties' proposed roster. The arbitrator shall advise the parties of its fees and expenses prior to selection and will be expected to charge such fees and expenses. The fees and expenses of the arbitrator shall be shared equally between the parties.

The arbitrator shall have the right to subpoena witnesses and require the production of pertinent documents at the request of either party. If the parties conclude that an arbitration hearing should be scheduled, the arbitrator may select a hearing date and notify the parties by written notice at least thirty (30) days prior to the hearing date. No arbitration hearing shall be held unless all parties are present, provided no party has intentionally refused to participate in the arbitration hearing. If the parties choose not to have an arbitration hearing, the arbitrator shall make written request for all pertinent documents from the parties. Copies of any documents submitted by any party to the arbitrator shall be simultaneously delivered to the other parties, and any party shall be entitled to a written rebuttal of any written evidence submitted by another party.

The selection of the Subsequent Developer by the arbitrator shall be the sole issue to be decided by the arbitrator. The



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authority of the arbitrator shall derive solely as a result of the Agreement, and the arbitrator's selection of the Subsequent Developer shall be based upon the evidence provided by the parties and upon consideration of the terms of the Redevelopment Documents and the Donative Intent, whenever possible, and in light of applicable law, including, without limitation, the Landmarks Ordinance and the City's Zoning Ordinance. The selection of the Subsequent Developer by the arbitrator shall be final.

Notwithstanding anything contained herein, the Subsequent Developer (whether selected by the Disposition Committee or the arbitrator) must assume the unpaid principal of the First Mortgage and the interest accrued thereon due and payable as of the date of conveyance of the Site by the City to the Subsequent Developer.

During the time period from which title to the Site reverts with the City until the City conveys the Site to a Subsequent Developer in accordance with the provisions of this subsection, the City and Linpro may agree to utilize the Site for any appropriate interim uses.

(f) Distribution of Sale Proceeds. Upon the selection of the Subsequent Developer pursuant to the provisions contained in subsection 5.3(d) or 5.3(e), and the conveyance of the fee title to the Site from the City to the Subsequent Developer, the proceeds from said conveyance shall be utilized first to reimburse the City for:

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- (a) costs and expenses incurred by the City with regard to the reconveyance of the Site from Developer, and the management and subsequent conveyance of the Site to the Subsequent Developer;
- (b) all taxes, assessments, and water and sewer charges with respect to the Site;
- (c) any payments made or necessary to be made (including attorneys' fees) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees;
- (d) any expenditures made or obligations incurred with respect to construction and maintenance of any Project improvements constructed on the Site; and
- (e) any other amounts owed to the City by Developer, its successors or transferees.

If the Subsequent Developer is selected pursuant to the provisions contained in subsection 5.3(d), any remaining sums shall be distributed to the City, Developer, Linpro and MKDG on a

pro-rata basis determined by each parties' respective contribution expended on the acquisition of the Site and, to the extent that they are recognized in section 4.5(c)(1) as eligible costs, the sums expended toward the renovation of the Theaters and the redevelopment of the Site.

If the Subsequent Developer is selected pursuant to the provisions contained in subsection 5.3(e), then any remaining sums shall be distributed in the following order: (1) Developer shall be entitled to a reimbursement of all of its reasonable Project costs (as certified by the Escrowee and the Inspector pursuant to the Escrow described in subsection 4.5(c) above), (2) the City shall be reimbursed for its Financial Contribution, (3) Linpro and MKDG shall be reimbursed based on their respective contributions with regard to the acquisition of the Site and the renovation of the Theaters, and (4) any remaining sums not utilized in (1)-(3) above in this paragraph shall be distributed to the City, Developer, Linpro and MKDG on a pro-rata basis determined by each parties' respective contribution expended on the acquisition of the Site, the renovation of the Theaters and the redevelopment of the Site.

**5.4 Waiver and Estoppel.** Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by Developer shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of Developer.

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5.5 Indemnity. Developer hereby agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with: (i) the failure of Developer to perform its obligations under the Agreement; (ii) the failure of Developer or any contractor to pay contractors, subcontractors or materialmen in connection with construction of the Project; (iii) a material misrepresentation or omission in the Redevelopment Documents which is the result of information supplied or omitted by Developer or by agents, employees, contractors or persons acting under the control or at the request of Developer; (iv) the failure of Developer to redress any misrepresentations or omissions in the Agreement or any other agreement relating hereto; (v) any activity undertaken by Developer at the Site; and (vi) any claim or cost relating to the soil and environmental condition of the Site.

5.6 Access to the Site. Any duly authorized representative of the City shall, at all reasonable times, have access to the Site, before and after closing, for the purpose of confirming Developer's compliance with the Agreement, the Redevelopment Documents, or both.

5.7 City's Right to Inspect Records. Developer agrees that the City shall have the right and authority to review and audit, from time to time, Developer's books and records relating to the Project, including, without limitation, Developer's loan

statements, general contractor's sworn statements, general contracts, subcontracts, purchaser orders, waivers of lien, paid receipts and invoices. All such books, records and other documents shall be available at the offices of Developer for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the City.

## SECTION VI

### DEVELOPER'S AFFIRMATIVE ACTION OBLIGATIONS AND FIRST SOURCE HIRING PROGRAM

6.1 Affirmative Action Plan. Developer has entered into an agreement with the City dated October 24, 1990, a copy of which is attached hereto as Exhibit C to cause the development and implementation of an affirmative action program affecting the renovation of the Theaters and the construction of other Project improvements and the operation of the Theater and other Project improvements by Developer. Developer and its successors and assigns shall not discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or sexual orientation and shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or sexual orientation and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

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training, including apprenticeship. Developer additionally agrees to comply with the provisions contained in Executive Order 89-7 dated April 26, 1989.

6.2 First Source Hiring Program. Developer has entered into an agreement with the City dated July 18, 1990, a copy of which is attached hereto as Exhibit E to cause the development and implementation of a first source hiring program affecting the operation of the Theaters and other Project improvements.

## SECTION VII

### MISCELLANEOUS PROVISIONS

7.1 Entire Agreement. Except as otherwise provided herein, the Agreement contains the entire agreement of the parties with respect to the Project and supersedes all prior agreements, negotiations and discussions with respect thereto, and shall not be modified, amended or changed in any manner whatsoever except by mutual consent of the parties as reflected by written instrument executed by the parties hereto. Notwithstanding the foregoing, it is agreed that no material amendment or change shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council of the City. The term "material" for the purpose of this subsection 7.1 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligation of Developer by more than five percent (5%) or materially changes the Site or character of

the Project or any activities undertaken by Developer affecting the Site, the Project, or both, or increases any time agreed for performance by either party by more than ninety (90) days.

7.2 Assignability and Transfer. Unless permitted by the provisions contained in subsections 5.3(d) and 5.3 (e) above, Developer, until the City issues the Certificate with regard to the completion of the Project, shall not assign, transfer or convey any right, title or interest in the Project, the Site, or both, or any of its duties or obligations under the Agreement as they relate to the Project, the Site, or both.

7.3 Conflict of Interest - City's Representatives Not Individually Liable. Prior to the issuance of the Certificate by the City, no member of the Commission, the DOP, or other City board, commission or agency official, or employee of the City shall have any personal interest, direct or indirect, in Developer, the Agreement, the Site or the Project; nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to Developer, or any successor in interest, to perform any commitment or obligation of the City under the Agreement nor shall any such person be personally liable in the event of any default or breach by the City.

7.4 Disclosure. Within thirty (30) days prior to the execution date of the Agreement by the parties, Developer shall

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deliver to the City evidence reasonably satisfactory to the Commissioner listing its Board of Trustees, officers and directors of Developer and disclosing any real property interests owned or managed by Developer.

7.5 Survival. All representations and warranties contained in the Agreement are made as of the execution date of the Agreement and the execution, delivery and acceptance hereof by the parties shall not constitute a waiver of rights arising by reasons of any misrepresentation.

7.6 Mutual Assistance. The parties agree to perform their respective obligations, including the execution and delivery of any documents, instruments, petitions and certifications, as may be necessary or appropriate, consistent with the terms and provisions of the Agreement.

7.7 Cumulative Remedies. The remedies of any party hereunder are cumulative and the exercise of any one or more of the remedies provided by the Agreement shall not be construed as a waiver of any of the other remedies of such party unless specifically so provided herein.

7.8 No Merger with Deed. The provisions of the Agreement shall not be merged with the Deed.

7.9 Disclaimer. No provision of the Agreement, nor any act of the City, shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City.



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**7.10 Notices.** Any notice called for herein shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered and receipted, as follows:

If to the City: Commissioner  
Department of Planning  
Room 1000, City Hall  
Chicago, Illinois 60602

with a copy to: Corporation Counsel  
City of Chicago  
Room 511, City Hall  
Chicago, Illinois 60602

If to Developer: The Chicago Theatre Group  
c/o Goodman Theatre  
200 South Columbus Drive  
Chicago, Illinois 60602

with a copy to: Irving Markin, President  
I.J. Markin Financial  
Services, Inc.  
919 North Michigan Avenue  
Suite 2300  
Chicago, Illinois 60611

Michael Pepper  
The Linpro Company  
55 West Wacker Drive  
Suite 1120  
Chicago, Illinois 60601

Gary Gray  
Miller-Klutznick-Davis-  
Gray Co.  
737 North Michigan Avenue  
Chicago, Illinois 60611

Notices are deemed to have been received by the parties three (3) days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**7.11 Headings.** The headings of the various sections and subsections of the Agreement have been inserted for convenient

reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

**7.12 Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

**7.13 Recordation of the Agreement.** Upon execution of the Agreement by the parties, Developer, at its sole expense, shall promptly record one original of the Agreement with the Office of the Recorder of Deeds of Cook County, Illinois.

**7.14 No Third Party Beneficiary.** The approvals given by the City pursuant to the Agreement and the Certificate when issued by the City shall be only for the benefit of Developer, Linpro, MKDG, the mortgagee or other lien holder, and their successors in interest in the Site and no other person or party may assert against the City or claim the benefit of such approval or certificate.

**7.15 Successors and Assigns.** The terms of the Agreement shall be binding upon the City, Developer, and their respective heirs, legal representatives, successors and assigns.

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

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7.17 Counterparts. The Agreement shall be executed in triplicate, each of which shall constitute an original instrument.

IN WITNESS WHEREOF, the parties hereto have executed or caused the Agreement to be executed, all as of the date first written above.

CITY OF CHICAGO,  
a municipal corporation

THE CHICAGO THEATRE GROUP,  
an Illinois not for profit  
corporation

By: Richard M. Daley  
Richard M. Daley  
Mayor

By: Irving J. Markin  
Irving J. Markin, Chairman

[City Seal]

Attest: David J. Corden  
Secretary

Attest: Walter S. Kozubowski  
Walter S. Kozubowski  
City Clerk

Approved as to Form  
and Legality,  
City of Chicago Office of Corporation Counsel

Kelly R. Walsh  
Kelly R. Walsh  
Corporation Counsel

Approved, City of Chicago Department of Planning

David R. Mosena  
David R. Mosena  
Commissioner

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LIST OF EXHIBITS

- A - Legal Description
- B - Deed
- C - Affirmative Action Plan
- D - Agreement to Provide Assistance
- E - First Source Agreement
- F - Public Amenities
- G - Permitted Exceptions
- H - Mortgage
- I - Mortgage Note
- J - Request for Advance Form
- K - Release of Waiver of Lien Form
- L - Project Cost Analysis
- M - Inspection Certificate

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## EXHIBIT A

### PROPERTY

All that property and space below a horizontal plane having an elevation of 123.89 feet, Chicago City Datum, and lying within the boundaries projected vertically of the following described parcel of land, to wit:

Lot 1 and the East Quarter of Lot 2 in Block 35 in the original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 17-09-436-010-0000  
17-09-436-011-0000

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EXHIBIT B

## QUITCLAIM DEED

Grantor, the CITY OF CHICAGO, an Illinois municipal corporation ("Grantor"), for and in consideration of TEN and NO/100 DOLLARS (\$10.00), conveys and quitclaims, pursuant to ordinance adopted \_\_\_\_\_, 1990, to CHICAGO THEATRE GROUP, an Illinois not for profit corporation ("Grantee"), all interest and title of Grantor in the following described real property ("Property").

All that property and space below a horizontal plane having an elevation of 123.89 feet, Chicago City Datum, and lying within the boundaries projected vertically of the following described parcel of land, to wit:

Lot 1 and the East Quarter of Lot 2 in Block 35 in the Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: 49 West Lake Street,  
180-190 North Dearborn Street,  
Chicago, Illinois

Permanent Index Nos.: 17-09-436-010  
17-09-436-011

Further, this quitclaim deed ("Deed") is made and executed upon, and is subject to certain express conditions and covenants hereinafter contained, said conditions and covenants being a part of the consideration for the Property and are to be taken and construed as running with the land, and Grantee hereby binds itself and its successors, assigns, grantees and lessees to these covenants and conditions which covenants and conditions are as follows:

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**FIRST:** Grantee shall devote the Property only to the uses authorized by Grantor and specified in the applicable provisions of: (i) the Redevelopment Plan for Blighted Commercial Area North Loop ("Plan"), approved by the City Council of the City of Chicago pursuant to ordinance adopted March 20, 1979, (ii) the North Loop Guidelines for Conservation and Redevelopment ("Guidelines"), approved by the City Council of the City of Chicago pursuant to ordinance adopted October 27, 1982, including any amendments approved by the City Council affecting the Plan and the Guidelines prior to the date of the Deed, and (iii) that certain agreement known as "Block 35, North Loop Project Redevelopment Agreement, Chicago Theatre Group d/b/a The Goodman Theater" ("Agreement") entered into between Grantor and Grantee on \_\_\_\_\_, 1990 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on \_\_\_\_\_, 1990, as document # \_\_\_\_\_. Specifically, in accordance with the terms of the Agreement, Grantee shall renovate and rehabilitate those certain theaters presently improving the property commonly known as the Harris-Selwyn Theatres ("Theaters") in order to preserve their historic and architecturally significant features in accordance with their status as designated landmarks of the City of Chicago and shall utilize the Theaters for the presentation of theatrical, cultural and entertainment activities.

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**SECOND:** Grantee shall pay real estate taxes and assessments on the Property or any part thereof when due. Prior to the issuance by Grantor of a Certificate of Completion (as hereinafter defined), Grantee shall not encumber the Property, except to secure financing in an amount not to exceed the total Project costs minus the sum of the City's Financial Contribution and Developer's Financial Contribution (as such terms are defined in the Agreement). Grantee shall not suffer or permit any levy or attachment to be made or any other encumbrance or lien to attach to the Property until Grantor issues a Certificate of Completion.

**THIRD:** Grantee shall renovate and rehabilitate the Theaters and shall construct certain other improvements as anticipated by the Agreement on the Property (the rehabilitation of the Theaters and the construction of other improvements are collectively referred to as the "Project"). The Project shall be constructed in accordance with those certain design plans and specifications approved by Grantor, the Commission on Chicago Landmarks and the Linpro Company in accordance with the terms of the Agreement. Grantee shall diligently proceed with the construction of the Project to completion, which construction shall commence upon the conveyance of the Deed by Grantor to Grantee and the issuance of a building permit by Grantor with regard to the construction of the Project, and shall be completed by Grantee within thirty (30) months from the date Grantor issues the building permit.

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**FOURTH:** Until Grantor certifies in writing that the Project has been completed in accordance with the Agreement and the Deed, Grantee shall have no right to convey any right, title or interest in the Property without the prior written approval of Grantor.

**FIFTH:** Grantee agrees for itself and any successor in interest not to discriminate based upon race, religion, color, sex, national origin or ancestry, age, handicap, sexual orientation, military status or source of income in the sale, lease, rental, use or occupancy of the Property or any part thereof or any improvements erected or to be erected thereon or any part thereof. In addition, Grantee shall comply with the terms of that certain Affirmative Action Plan and First Source Hiring Program as described on Exhibits "C" and "E", respectively, of the Agreement.

The covenants and agreements contained in the covenants numbered **FIRST** and **FIFTH** shall remain without any limitation as to time. The covenants and agreements contained in covenants numbered **SECOND**, **THIRD** and **FOURTH** shall terminate on the date Grantor issues the Certificate of Completion as herein provided except that the termination of the covenant numbered **SECOND** shall in no way be construed to release Grantee from its obligation to pay real estate taxes and assessments on the Property or any part thereof.

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In the event that subsequent to the conveyance of the Property or any part thereof and prior to delivery of the Certificate of Completion by Grantor, Grantee defaults in or breaches any of the terms or conditions of the Agreement or in the Deed which have not been cured or remedied within the period and in the manner provided for in the Agreement, Grantor may re-enter and take possession of the Property, terminate the estate conveyed by the Deed to Grantee as well as Grantee's right of title and all other rights and interests in and to the Property conveyed by the Deed to Grantee, and re-vest title in said Property with the City; provided, however, that said re-vesting of title in the City shall always be limited by, and shall not defeat, render invalid, or limit in any way, the lien of the First Mortgage (as defined in the Agreement) for the protection of the holders of the First Mortgage. The Property shall thereafter be developed in accordance with the terms of the Plan, the Guidelines and the Agreement, including but not limited to, sections 5.3(d) and 5.3(f) of the Agreement.

Notwithstanding any of the provisions of the Deed or the Agreement, including but not limited to those which are intended to be covenants running with the land, the holder of the First Mortgage or a holder who obtains title to the Property as a result of foreclosure of the First Mortgage shall not be obligated by the provisions of the Deed or the Agreement to construct or complete the construction of the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the Deed or the Agreement be construed to so obligate such holder. Nothing in this section or any section or provision of the

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Agreement or the Deed shall be construed to permit any such holder to devote the Property or any part thereof to a use or to construct improvements thereon other than those permitted in the Plan, the Guidelines and the Agreement.

Promptly after the completion of the Project in accordance with the terms of the Agreement, Grantor shall furnish Grantee with an appropriate instrument in accordance with the terms of the Agreement ("Certificate of Completion"). The Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants contained in the Agreement and in the Deed with respect to the construction of the Project and the dates for beginning and completion thereof.

The Certificate of Completion shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property. If Grantor shall refuse or fail to provide the Certificate of Completion, Grantor, within thirty (30) days after written request by Grantee, shall provide Grantee with a written statement indicating in adequate detail what acts or measures will be necessary, in the opinion of Grantor, for Grantee to take or perform in order to obtain the Certificate of Completion.

If, subsequent to the issuance of the Certificate, Grantee seeks to abandon the Property due to its inability to use the Property for uses consistent with the Plan, the Guidelines and the Agreement for whatever reason except bankruptcy, the fee title to the Property shall automatically revert to Grantor upon receipt by Grantor of written notice of the intention of Grantee to discontinue use of the Property. The fee title to the Property shall also revert to Grantor upon the receipt of written

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notice by Grantee from Grantor that Grantee has failed to utilize the Property for uses consistent with the Plan, the Guidelines and the Agreement. In either event, the Property shall be conveyed to the Subsequent Developer (as defined in the Agreement) in accordance with the terms of the Plan, the Guidelines and the Plan, the Guidelines and the Agreement, including but not limited to, sections 5.3(e) and 5.3(f) of the Agreement.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed in its name and behalf and its seal to be hereunto duly affixed and attested, by the Mayor and by the City Clerk, on or as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF CHICAGO, a  
municipal corporation

BY:

\_\_\_\_\_  
, Mayor

ATTEST:

\_\_\_\_\_  
, CITY CLERK

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STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF C O O K )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that WALTER S. KOZUBOWSKI, personally known to me to be the City Clerk of the City of Chicago, a municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me acknowledged that as Clerk, he signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the City of Chicago, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

( S E A L )

My commission expires \_\_\_\_\_.

This instrument was prepared by:

After recording,  
please forward to:

\_\_\_\_\_  
Assistant Corporation Counsel  
Room 511, City Hall  
121 N. LaSalle Street  
Chicago, Illinois 60602

MLDEEDCHG (PAM)

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EXHIBIT C

**AFFIRMATIVE ACTION PLAN**

**TO**

**BLOCK 35, NORTH LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
d/b/a THE GOODMAN THEATER**

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THIS AFFIRMATIVE ACTION PLAN ("Plan") is entered into this <sup>24th</sup> day of October, 1990, by and between the City of Chicago, an Illinois municipal corporation ("City") and the Chicago Theatre Group ("Developer") and made part of that certain redevelopment agreement known as "Block 35, North Loop Project Redevelopment Agreement, Chicago Theatre Group a/b/a the Goodman Theater" ("Redevelopment Agreement").

## POLICY STATEMENT

The City is committed to a policy of providing fair and representative employment and business opportunities for minorities and women in order to remedy the adverse effects of historically exclusionary practices within society. This policy extends to the procurement of goods and services and the award of construction contracts for publicly-supported facilities. On December 9, 1983, the City Council of the City of Chicago adopted an ordinance ("Ordinance") requiring affirmative action to promote employment opportunities for minority and female workers and for residents of the City in City projects. On April 3, 1984, the Mayor of the City of Chicago issued Executive Order 85-2 requiring greater utilization of minority and female-owned business entities in the City's contracting process. This commitment was renewed on April 25, 1989 with the issuance of Executive Order 89-7.

The Developer recognizes the importance of successful affirmative action programs to the continued growth and vitality of the City. Developer will establish, implement and maintain a continuing affirmative action program by executing the Plan in order to promote equal opportunity in every aspect of employment and procurement of goods and services. The Plan will include: 1) a written affirmative action plan committing to provide maximum opportunity for minorities and females with regard to the development of the project and the operation of the renovated theaters 2) assignment of adequate personnel to administer the program; 3) establishment of goals which are higher than the prevailing levels for minority and female employment during both the pre-construction and construction periods; 4) formulation of achievable goals for utilization of women/minority business enterprises in the Project; 5) creation of the Agreement to Provide Assistance to Other Theater Groups, a copy of which is attached to the Agreement as Exhibit D; and 6) implementation of procedures to assure achievement of program goals, including provision of objective standards to determine how goals are being met.

The purposes of the Plan are to remedy past discriminatory underutilization of minorities and women and to promote the economic welfare of the people of the City by assisting minority and women businesses to actively participate in the Project, and by providing employment opportunities to ensure equitable participation in the Project by minority persons, women and residents of the City. In accordance with the guidelines and goals set forth in the Plan, Developer shall implement a comprehensive strategy,

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encouraging and providing for the greatest practicable participation throughout the Project by business enterprises owned by minorities and women, and by minority and women employees, which shall apply prospectively from the date of the Redevelopment Agreement. The City agrees to assist the Developer with the implementation of the Plan as provided herein.

The terms and provision of the Plan are deemed to comply with the Ordinance and Executive Order 89-7. Moreover, the requirements and provisions of the Plan do not establish legal or contractual rights for any person or organization other than the City and the Developer and its successors and assigns.

The City recognizes that it is the Developer's intent to hire qualified, responsible bidders for the construction of the Project. The City agrees that it is not the purpose or intent of the Plan to impose upon the Developer or its contractors the obligation, or require the Developer or its contractors to take actions, which significantly affect the cost of the Project or any portion thereof (or the operation or management thereof) or result in a delay in completion of the Project, and it is further understood that the Developer or its contractors (consistent with the obligation to exercise good faith as required by the Plan) shall be entitled to judge the qualifications of MBE/WBE contractors utilized for the completion of the Project or the operation or management thereof.

Deputy Cook County Clerk's Office

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## SECTION I

### DEFINITIONS

Whenever the following words or terms are used in the Plan, unless otherwise defined, they shall have the meaning ascribed to them in this section. Capitalized terms not defined herein shall have the meanings defined in the Redevelopment Agreement.

**AGENCY:** the City or by its designed, initially the Department of Planning of the City, for all areas of administration of the Plan with the exception of certification procedures as provided in section 3.5 below. The City may designate in writing any other City agency or a City employee or consultant, to perform any function or duty required by the Plan.

**CITY RESIDENTS or RESIDENTS:** persons domiciled within the City of Chicago.

**COMMISSIONER** the Commissioner of the Department of Planning.

**COMPONENT:** one of the divisions described below whereby MBE and WBE participation goals and minority and women employment goals will apply.

**CONSTRUCTION COMPONENT:** those activities involving, but not limited to, the following:

- (1) Concrete -- reinforced.
  - a. Forms and fabrication
  - b. Reinforced steel
  - c. Placement of concrete
  - d. Finish concrete
- (2) Masonry -- bricklayers, granite
- (3) Structural steel
- (4) Metal decking
- (5) Miscellaneous metals
- (6) Ornamental metals
- (7) Carpentry -- rough and finish

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- (8) Moisture protection (roofing, etc.)
- (9) Fenestration -- all exteriors, interiors, which will include hardware, doors, glass, etc.
- (10) Finish trades (other than tenant improvements)
  - a. Floors
  - b. Walls
  - c. Ceilings
  - d. Lath and plaster
  - e. Partitions
  - f. Tile work
  - g. Painting
  - h. Wall coverings
  - i. Carpets
- (11) Vertical transportation
- (12) Mechanical trades
  - a. Electrical
  - b. Plumbing
  - c. Fire protection
  - d. HVAC
- (13) Trash hauling and cleanup
- (14) Field administration
- (15) Water service
- (16) Office supplies
- (17) Security
- (18) Janitorial
- (19) Progress photos
- (20) Printing
- (21) Maintenance and mechanics

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- (22) Fencing/scaffolding
- (23) Final cleanup
- (24) Equipment rental

Excluded are: energy and utility costs; taxes; permits and fees; city services; traditionally reimbursable expenses; and tenant improvements.

**CONTRACTOR:** any person who has a contract with Developer (in which the parties do not stand in the relationship of an employer and an employee), which provides for any portion of the Developer's obligation under the Redevelopment Agreement to be performed, undertaken or assumed.

**CONTROLLED:** to be determined by considering the degree to which minority group members or women participate in the possession and management of the partnership, corporation or joint venture, including consideration of their participation in the decisions affecting the day-to-day management and operations of the business, and of their proportionate interest in the capital, assets, profits and losses of the business.

**DEPARTMENT OF PLANNING:** the Department of Planning of the City.

**"ELIGIBLE MBE OR WBE FIRM":** includes any contractor or subcontractor providing services, products or materials in the Project, who has been certified by the Agency as provided in 3.5 below.

**"GOALS":** the targets established in the Plan for MBE and WBE participation in the Project, or for minority and women employment in conjunction with the Project. The establishment of specific goals herein as to MBE or WBE participation or minority and women employment is not intended, and shall not be used, to discriminate against any business contractor, subcontractor, applicant or employee. Failure to meet a goal will alert Developer that further actions to comply with the Goals described in the Plan may be necessary, but shall not, by itself, establish that Developer has failed to use good faith efforts.

**LOCAL BUSINESS:** a business located within the corporate limits of the City, and which has the majority of its regular, full-time work force located within the City.

**MINORITY:** a person who is a citizen or lawful permanent resident of the United States and who is Black; Hispanic, regardless of race; Asian-American and Pacific Islanders; American Indian or Alaskan native.

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**MINORITY BUSINESS ENTERPRISE ("MBE"):** a business that is owned and controlled by one or more minority persons.

**OWNED:** a business which is: (1) a sole proprietorship legitimately owned by a minority person or woman; (2) a partnership or joint venture in which at least fifty-one (51) percent of the beneficial ownership interests legitimately are held by minority persons or women; or (3) a corporation or other entity in which at least fifty-one (51) percent of the beneficial ownership interests legitimately are held by minority persons or women.

**PERSON or PERSONS:** any natural person, corporation, partnership, unincorporated association, or joint venture.

**POST-CONSTRUCTION COMPONENT:** all of the activities and obligations of the Developer for the Project which apply for a period of five (5) years subsequent to the issuance by the City of the Certificate for the Project.

**PRE-CONSTRUCTION COMPONENT:** all architectural, structural engineering, mechanical and electrical engineering, and landscape architecture.

**PROJECT:** the renovation of the theaters and the construction of other improvements at the site as described in the Redevelopment Agreement.

**REDEVELOPMENT AGREEMENT:** that certain redevelopment agreement between the City and Developer dated as of \_\_\_\_\_, 1990, to which the Plan is appended.

**SMALL BUSINESS:** a business employing fewer than 100 employees, and which is neither dominant in its field nor the parent, affiliate or subsidiary of a business dominant in its field.

**SUBCONTRACTOR:** any person who has such a contract with a contractor or with a subcontractor.

**WOMEN BUSINESS ENTERPRISE ("WBE"):** a business that is owned and controlled by one or more women.

## SECTION II

### ADMINISTRATION AND MONITORING

- 2.1 The Developer shall be obligated under the Plan to make good faith efforts to comply with all provisions and meet all goals set forth herein. The Agency agrees to act reasonably and arbitrarily in administering the Plan.
- 2.2 To facilitate and assure that the goals described in the Plan are met, the Developer will assign an affirmative action officer ("AA Officer") to assist with the monitoring and implementation of the Plan. The AA Officer shall be a full-time employee of the Developer. Developer will provide adequate staff and support for the Officer to administer the Plan and to act as liaison with the Agency.
- 2.3 The AA Officer shall have responsibility for coordinating all of the affirmative action activities undertaken by Developer with regard to the Project. The AA Officer's major focus shall be the implementation of the Plan, assuring good faith efforts to meet the goals, described in the Plan, and the documentation and reporting of the efforts and results. The duties of the AA Officer shall include responsibility for the following:
- (a) Ensuring that all aspects of the Plan are properly implemented; that all employment and procurement practices of the Developer are consistent with the Plan; and that all technical or procedural phases of compliance are met.
  - (b) Designing, implementing and monitoring internal record-keeping systems to measure the effectiveness of the Plan; making regular reports to management personnel on the effectiveness of the Plan; identifying problem areas and establishing programs to aid in problem solving; informing management of the latest developments in the area of affirmative action; and recommending further policies and programs to implement the Plan.
  - (c) Compiling and submitting Affirmative Action Reports (as defined below) required by the Plan; reviewing Agency responses and recommendations; and meeting with Agency representatives when necessary to provide additional information or address problems concerning implementation of the Plan.



- (d) Reviewing and monitoring the Contractor's Affirmative Action Reports, including, if necessary, making periodic on-site inspections to ensure reported numbers on minority and female participation and minority, women and Resident employees are reflected in the actual construction work force; and meeting with, assisting and counseling contractors and trade unions as necessary on meeting minority and female hiring goals.
- (e) Developing affirmative action program and policy statements; making presentations to business associations, social agencies and other organizations to increase awareness of the Developer's affirmative action program and of its commitment to MBE and WBE participation and minority and women employment; and maintaining communications between Developer and relevant organizations as necessary.
- (f) Researching the availability of MBE and WBE firms and of minority and women prospective employees for business and employment opportunities.
- (g) Counseling and assisting MBE and WBE contractors and suppliers wishing to qualify for participation in the Project, including with respect to: (1) submission of bids; (2) securing bonding and insurance; (3) formation of joint ventures with majority contractors; and (4) obtaining MBE/WBE certification from the City, as described in section 3.5 below.

- 2.4 The Agency shall designate an Affirmative Action Coordinator ("AA Coordinator") operating under the auspices of the Department of Planning. The AA Coordinator shall be responsible for the Agency's responsibilities under the Plan, for monitoring the Plan on behalf of the Agency, and for receiving the Developer's communications and Affirmative Action Reports (as defined in section 2.7 below) and transmitting Agency responses and other communications.
- 2.5 The Developer shall require its contractors and subcontractors to furnish to its AA Officer reports and information reasonably requested by the Agency to implement and monitor this Plan.
- 2.6 The AA Coordinator shall promptly review the Affirmative Action Reports submitted by Developer on a monthly basis during construction and on a quarterly basis during post-construction. The AA Coordinator shall forward such Reports to the Commissioner. The Commissioner is authorized to

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review, on behalf of the City, the administration of the Plan. Upon review of the Reports, the AA Coordinator may request further information pertinent to evaluation of the implementation of the Plan. If the Agency has any substantial concerns about the adequacy of implementation of the Plan, the AA Coordinator shall provide notice to the AA Officer within thirty (30) days after receipt of the Affirmative Action Reports regarding the results of the review as described in this section and, if necessary, shall contact the AA Officer to promptly meet, discuss and attempt to resolve areas of concern regarding implementation of the Plan. If any substantial concerns are not resolved by such discussions and negotiations, the Commissioner shall report all negotiations regarding the adequacy of implementation of the Plan to the Contract Compliance Officer of the City. Failure of the AA Coordinator to provide such notice shall be deemed approval of the Affirmative Action Reports.

2.7

Developer, in cooperation with the Agency, shall develop two different reports (collectively, "Affirmative Action Reports") to be approved by the Agency: (1) a "short form" which provides data on dollar value of total contracts awarded, dollar value of total contracts awarded to MBE and WBE firms, the identity of participating MBE and WBE firms, including the disclosure of names, addresses, telephone numbers, and principal contact of said firms, actual numbers and percentages of minority and women employment in the Project, including identification of names, addresses, total hours worked and disadvantaged designation, and relevant supporting data; and (2) a "comprehensive report" containing a narrative description of the efforts undertaken, by Developer to comply with the Plan, further analysis of results and problems, if any, and suggested further steps, if required. The short form report will be submitted to the Agency's AA Coordinator on a monthly basis, and the comprehensive report on a quarterly basis, throughout the pre-construction and construction components.

## SECTION III

### MINORITY AND WOMEN BUSINESS ENTERPRISES PARTICIPATION PLAN

#### 3.1 Introduction

The following participation plan and goals are adopted by Developer for participation by minority and women business enterprises in the Project. The Developer shall make good faith efforts to meet the minority and women business enterprise goals established hereunder.

#### 3.2 Methods to Ensure MBE and WBE Participation

3.2.1 In making reasonable good faith efforts to meet the goals for MBE and WBE participation, Developer will request the assistance of the AA Coordinator in referring minority and women businesses for contracts, subcontracts and other purchases. Developer will make the MBE and WBE provisions and goals set forth in section 3.2 and 3.3 of the Plan applicable as appropriate to all contractors and subcontractors in pre-construction and construction components of the Project; including appropriate provisions and goals for MBE and WBE participation in construction contracts released by Developer and requiring the inclusion of such provisions and goals in subcontracts entered into by contractors; and providing that all subcontractors must report to contractors, and all contractors must report to Developer on a monthly basis, information necessary for monitoring implementation of the Plan and reporting to the Agency concerning MBE and WBE participation.

3.2.2 The methods and procedures to achieve the goals set forth herein, which may be evaluated by the Agency to determine whether the Developer has made all good faith efforts to achieve the Goals, shall include the following:

- (a) Participation (commencing with the pre-construction component) of MBE and WBE participation in the areas of finance, architecture, engineering and law.
- (b) Establishment of joint ventures between prime and MBE and WBE contractors as a bid package.
- (c) Breaking out contracts into smaller packages to allow for bidding by smaller MBE and WBEs.

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- (d) Advertising invitations to bid, particularly in media which has a principal or substantial constituency in the minority community, including statements in the advertisements indicating Developer's intent to encourage MBE and WBE participation in the Project.
- (e) Assisting, other than financially, MBEs and WBEs in obtaining bonding and insurance.
- (f) Assisting, other than financially, MBEs and WBEs in submitting bids by offering Developer's consultation.
- (g) Assisting, other than financially, MBEs and WBEs in obtaining Certification by the City.
- (h) Contacting the organizations listed below, or similar organizations, and soliciting assistance in obtaining MBE and WBE participation:
  - (a) Chicago Urban League
  - (b) Chicago Economic Development Corporation
  - (c) Chicago United
  - (d) Illinois Department of Commerce and Community Affairs Small Business Office
  - (e) Minority Economic Resource Corporation
  - (f) National Association of Women Business Owners
  - (g) Alexander Grant & Company, Minority Business Development Center
  - (h) Association of Asian Construction Enterprises
  - (i) Black Contractors United
  - (j) Hispanic-American Construction Industry Association
  - (k) City of Chicago, Department of Purchases, Office of Contract Monitoring and Supplies

(l) National Minority Suppliers Development Council, Inc.

(m) Chicago Regional Purchasing Council

3.2.3 If the Commissioner, in consultation with the Purchasing Agent and the Contract Compliance Officer of the City, determines that it is impossible or economically unreasonable to utilize MBEs or WBEs to perform sufficient work to fulfill the commitment stated in this subsection, a waiver of all or a portion of the Goals may be granted.

3.3 MBE and WBE Participation Components and Goals

3.3.1 The MBE and WBE participation components shall be: (1) pre-construction; (2) construction; and (3) post-construction.

3.3.2 The dollar goals for participation by eligible MBEs and WBEs in the pre-construction and construction components shall be: twenty-five percent (25%) MBE and five percent (5%) for WBE firms of the aggregate costs for such components, and fifty percent (50%) for Local Businesses.

3.3.3 To the extent practicable, the Developer shall identify contracts requiring the expenditure of funds not exceeding \$10,000 for bids to be submitted solely by MBE, WBE, Small Business and Local Business firms.

3.4 Additional Provisions Concerning Calculating MBE and WBE Participation

3.4.1 In the event that less than fifty one percent (51%) of a joint venture is owned by a non-MBE or non-WBE partners or owners, the Developer shall receive proportionate credit towards meeting the MBE and WBE goals. For example, a twenty five percent (25%) minority owned joint venture that receives a \$100,000 contract would entitle Developer to \$25,000 credit.

3.4.2 When an eligible MBE or WBE firm is awarded a contract, and said firm subcontracts the performance of a portion of that contract, Developer shall receive credit only for that portion of the contract actually performed by the eligible MBE or WBE firm and for those amounts subcontracted to another eligible MBE or WBE firm. Developer shall receive credit for, and there shall not be excluded, dollars spent by any eligible MBE or WBE firm to purchase materials and supplies specific to the Project from non-MBE or WBE firms.

3.4.3 Where a firm which is not an MBE or WBE is awarded a contract, and said firm subcontracts a portion of that contract to an eligible MBE or WBE firm

or Local Business, Developer shall receive credit for the portion of the contract subcontracted to the MBE or WBE firm or Local Business. Developer shall receive credit for dollars spent by a firm which is not an MBE or WBE firm or Local Business to purchase materials and supplies specific to the Project from an MBE or WBE firm or Local Business.

3.4.4 The Developer shall be considered to have made a reasonable good faith effort to implement the goals and requirements of the Plan if Developer demonstrates to the Agency that there are not sufficient MBEs or WBEs reasonably or readily available to fulfill the requirements of the Plan. The reasons for which such determination shall be warranted shall include, without limitation, the following:

- (a) Lack of a sufficient supply in the City of Local Businesses and certified, responsible MBEs or WBEs (with respect to such characteristics as financial capacity and capability to meet the requirements of the work).
- (b) Inability to obtain competitive prices from available Local Businesses, MBEs and WBEs in the City, based upon prevailing prices on the open market as determined by Developer, provided that in all such cases there shall be submitted by Developer to the Agency a statement listing the name and bid amount of each person or firm bidding on the same portion or part of the contract as bid by such MBEs or WBEs or Local Businesses.
- (c) Failure of available Local Businesses, MBEs or WBEs to submit bids with respect to particular aspects of the Project.

3.5 Agency Certification of Eligibility of  
Minority and Women Business Enterprises

3.5.1 The Department of Purchases, Contracts and Supplies of the City ("Department of Purchases") shall develop and maintain a list of certified minority and women business enterprises, and shall be available to review the qualifications of and certify if appropriate, any firms (identified by Developer or otherwise) who represent that they qualify as minority or women business enterprises. In either instance, the Department of Purchases, shall certify each firm's: (a) status as an MBE or WBE entity, and (b) area(s) of specialty or expertise determined by the Purchasing Agent of the City to be most reflective of the firm's true specialty or expertise. Certification by the Agency shall be conclusive as to the MBE or WBE eligibility of a firm.

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- 3.5.2 All requests for certification and additional information required, if any, should be submitted to the Director of the Office of Contract Monitoring and Compliance of the Department of Purchases, Contracts and Supplies of the City with a copy of all materials to the Contract Compliance Officer and the AA Coordinator. Upon request, the Department of Purchases shall advise the Developer whether a proposed or bidding MBE or WBE firm has been previously certified within fourteen (14) working days by the City and, with respect to other firms, within twenty-one (21) days, that: (a) a firm has been certified as MBE or WBE, or (b) that additional information is required in order to complete the certification process. If additional information is required, such shall be furnished by the applicant firm within seven days after notification by the Department of Purchases, and a final determination shall be made by the Department relative to certification within sixty (60) days after receipt of such additional information. In all cases, the applicant firms and Developer will receive at least preliminary certification or denial -- upon which the Developer may rely for the purposes of the Project and the Plan -- within sixty (60) days of request for certification; then the proposed MBE or WBE firm shall be presumed to be an eligible firm for the purposes of the Plan. On request of Developer and the applicant firm, the time for submission of additional information and Department of Purchases' determination of eligibility shall be extended, in which case the presumption of eligibility shall not apply.
- 3.5.3 If at any time it is determined that any MBE or WBE certification has been falsely obtained, the Developer may seek to cure or correct the defect by whatever remedy is necessary. Developer's MBE and WBE contracts shall provide that all such contracts and subcontracts may be terminated if: (a) the contractor's or sub-contractor's status as MBE or WBE was a factor in the awarding of such contract or sub-contract, and (b) the status of the contractor or sub-contractor was misrepresented. In such event, Developer shall discharge the disqualified MBE or WBE and seek a suitable MBE or WBE as replacement.
- 3.5.4 Developer's minority and women business enterprise contracts shall require that all MBEs and WBEs report within fourteen (14) days to the AA Officer, and justify any changes in the ownership and control of the firm that occur during the duration of that contract. Developer shall promptly notify the Purchasing Agent and the AA Coordinator of any and all changes in the ownership and control of an MBE and WBE firm.
- 3.5.5 The Agency's certification procedures shall be uniformly applied to all applicants. Such procedures shall not be subject to arbitration.

## SECTION IV

### MINORITY AND WOMEN EMPLOYMENT PLAN

- 4.1 The following employment plan and goals are adopted by Developer with regard to the employment of minority and women workers in the Construction Component of the Project. During the construction of the Project as provided for in the Redevelopment Agreement, Developer shall make good faith efforts to achieve the minority and women employment goals set forth hereunder.
- 4.2 The goals for minority and women employment during the Construction Component shall be twenty five percent (25%) minority and five percent (5%) women employees. The employment goals for Residents shall be fifty percent (50%).
- 4.3 Developer may submit a written request for a waiver of all or a portion of such goals to the Commissioner who may, for good cause shown and following consultation with the Contract Compliance Officer of the City, approve such request for modification or reduction of employment goals as specified herein.
- 4.4 Developer shall take affirmative actions to eliminate any possible discrimination against any employee or applicant for employment based upon race, color, religion, sex, national origin or ancestry, age, handicap, sexual orientation, military status or source of income. These affirmative actions shall include, but not be limited to, the following areas: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 4.5 Developer will post in conspicuous places notices setting forth its affirmative action policy, particularly as reflected in section 4.4.
- 4.6 All solicitations of advertisements for employees placed by or on behalf of Developer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex national origin or ancestry, age, handicap sexual orientation, military status or source of income. Developer will cause the foregoing provisions to be inserted in all contracts and subcontracts for any work performed with regard to the Project so that such provisions will be binding upon each contractor or subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.



4.7 Developer will notify recruitment sources, and minority and women organizations of this affirmative action policy and encourage them to refer minorities and women for employment and to otherwise assist in achieving these affirmative action objectives. In particular, Developer will contact, or will require contractors to contact, the organizations listed below and similar organizations and solicit assistance in obtaining minorities and women to be employed on the Project and maintain a record of such organization's responses:

- (a) Department of Planning
- (b) Mayor's office of Employment and Training
- (c) Chicago Urban League
- (d) Chicago Economic Development Corporation

4.8 Developer will ensure and maintain a working environment free of harassment, intimidation, and coercion at the Project, and in all facilities at which employees are assigned to work, and will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of this affirmative action policy. The Developer will use its best efforts to ensure that seniority practices, job classification, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel in employment-related activities.

4.9 Developer will notify all contractors and use its best efforts to require its contractors to notify all subcontractors in writing of this affirmative action policy and require supportive action on their part in the relevant contracts. In particular, Developer will require substantially the following provisions in all construction contracts and subcontracts:

- (a) The Contractor will take affirmative action to eliminate any possible discrimination against any employee or applicant for employment based upon race, sex, religion, color, national origin or ancestry, age, handicap, sexual orientation, military status or source of income. This actions shall include, but not be limited to, the following areas: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- (b) The Contractor agrees to identify and use minority men and women subcontractors for any work subcontracted by it, whenever possible. Further, it is understood and agreed that the contractor shall have a goal of subcontracting twenty-five percent (25%) of the work to MBE enterprises and an additional five percent (5%) to WBE enterprises. The Contractor further agrees that upon the Developer's request, it shall prepare in written form and send to Developer a minority and women head count for its total work and subcontractors employed.
- (c) The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the policy reflected in, and meeting the requirements of, these affirmative action provisions.
- (d) The Contractor agrees that all solicitations or advertisements for employees place on behalf of or by the Contractor in connection with the Project will state that all qualified applicants will receive consideration without regard to race, sex, religion, color, national origin or ancestry, age handicap, sexual orientation, military status or source of income.
- (e) The Contractor agrees to use its best efforts to ensure that all of the work is performed by work forces containing the greatest practicable level of minority and women employees. The Contractor shall report in writing to Developer as often as may be required by the Developer its efforts to secure such minority groups and women employees and also any reasons for its being unable to employ minority and women employees.
- (f) The Contractor agrees that, in the undertaking of its responsibilities with regard to the Project it shall use the maximum number of apprentices allowed by the various trade agreements with the labor unions. Should the Contractor be unable to hire the specified maximum number of apprentices for any trade, it shall so report in writing to the Developer as often as may be required by Developer. Such report shall include not only its efforts to secure such maximum allowable apprentices, but also the reasons for its being unable to employ apprentices.

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- (g) The Contractor agrees to promote minority men and women to higher levels of responsibility in the various areas of work, whenever possible, to ensure continued growth.
- (h) The Contractor agrees to identify and use minority and women subcontractors for any work subcontracted by it whenever practicable. Reports documenting such efforts will be submitted to Developer as often as may be required by Developer.
- (i) The Contractor agrees to make and submit to Developer manpower utilization reports including the hours worked on the Project by minority and women employees and by Residents as often as may be required by Developer.
- (j) Meetings of Developer's and Contractor's supervisory and personnel office employees will be conducted as required by Developer, at which time this affirmative action policy and its implementation will be reviewed and explained.
- (k) During the contract period, the Contractor will maintain and make available to Developer documentation regarding minority and women business enterprise utilization and affirmative action with regard to employment. Documentation shall contain at a minimum, names and addresses of subcontracting minority and women business enterprises, the extent of minority or women ownership, and actual dollar amount of the contract award.
- (l) The Contractor agrees that these affirmative action provisions are to be inserted in each contract for any of the work subcontracted by the Contractor to others, and that the Contractor will be responsible for enforcing such provisions. The Contractor will report such enforcement efforts to Developer as often as may be required by Developer.
- (m) The Contractor agrees, unless precluded by a valid bargaining agreement, that, in addition to union halls, other sources will be used to solicit minority and women employees.
- (n) The Contractor agrees that the following steps shall be taken in relation to all trade unions with which it has bargaining agreements and/or whose members shall perform any of the work.

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- (1) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Contractor's commitments made in this Plan and shall deliver copies of such notices to Developer.
- (2) Prior to the commencement of its responsibilities with regard to the Project, the Contractor will notify all trade unions of its desire to receive referrals of qualified minority and women individuals.

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## SECTION V

### DISPUTE RESOLUTION

- 5.1 If, at any time during the existence of the Plan, the Agency believes that Developer is substantially failing to comply with the terms of the Plan, the AA Coordinator shall provide a written notice to the AA Officer explicitly invoking this section of the Plan, explaining the alleged non-compliance, describing the grounds for such belief, and proposing the further implementation steps the Agency believes should be taken.
- 5.2 If Developer disagrees with the Agency's evaluation, the AA Coordinator and AA Officer shall meet within fifteen (15) days of the delivering of the notice described in section 5.1 above and make every good faith effort to resolve the differences. If resolution of the dispute is not obtained, senior representatives of the Department of Planning and the Developer shall consult and attempt in good faith to resolve their differences as to the proper and adequate method of implementing the Plan.
- 5.3 If the Agency and Developer have consulted pursuant to section 5.2 above but have been unable to resolve their differences within forty-five (45) days following the notice of the City invoking this section, the matter shall be submitted to binding arbitration. The Agency shall be given the opportunity to demonstrate in arbitration that any particular implementation step it has proposed for the Project is required by the Plan. The sole issue which may be presented and decided in arbitration is whether such proposed steps are required to comply with the Plan. The arbitrators shall have the authority to direct the Developer to undertake such specific action in order to demonstrate good faith efforts as required by the Plan. The arbitration shall be conducted in accordance with the federal rules of evidence.
- 5.4 The arbitration shall be conducted by a panel of three (3) persons, one designated by Developer, one by the Agency and the third selected by agreement of the first two arbitrators. The Developer and the Agency shall designate their respective arbitrators within thirty (30) days after the submission of the dispute to arbitration, and the third arbitrator shall be selected within thirty (30) days thereafter. In other respects the arbitration shall be conducted pursuant to the rules and procedures of the American Arbitration Association, except as modified by agreement of the parties.
- 5.5 The determination of the arbitration panel shall be in writing and based upon the hearing record, and shall include a statement of findings and reasons therefor. The determination of the arbitrators shall be final and binding on the parties, and shall be judicially enforceable.

## SECTION VI

### REMEDIES

- 6.1 If the arbitration panel determines that Developer's proposed actions do not comply with the Plan, the Developer will have forty-five (45) days following receipt of the panel's determination to achieve compliance.
- 6.2 The Agency will respond in writing whether or not the Developer has complied with the panel's determination. The Agency will have ten (10) days from the date it receives written notice from Developer that it believes that it is in compliance with the arbitration panel's determination with which to respond to Developer.
- 6.3 If, after the Agency responds in writing and Developer has not reached substantial compliance, damages in the amount of one thousand dollars (\$1,000) per day will be due immediately to the Agency by Developer until compliance is reached.
- 6.4 Notwithstanding anything to the contrary, the City shall have available any remedies at law or in equity to ensure Developer's compliance with the terms of the Plan.

## SECTION VII

### RESIDENT EMPLOYMENT AND POST-CONSTRUCTION PROVISIONS

#### 7.1 General Provisions

7.1.1 During the first five (5) years following the issuance by the City of a Certificate with regard to the Project, Developer shall make good faith efforts, in accordance with the provisions of this section to achieve certain affirmative action goals in the following areas:

(a) With regard to the direct employees of Developer, the employment of Residents in the Post-construction Component of the Project; and

(b) Participation of MBEs and WBEs and of minority and women employees in the post-construction operations of Developer with respect to the Project.

7.1.2 Developer shall be obligated to make good faith efforts to achieve the goals described in this Section VII, and to report to the Agency about its activities and the results. The nature of the good faith efforts shall be consistent with the efforts described in sections II-IV above, as relevant to the respective MBE/WBE or employment activities described in this section.

#### 7.2 Employment of City Residents in the Post-Construction Component

7.2.1 With regard to direct employees, Developer will make good faith efforts, consistent with those described in Section IV, to achieve an employment goal of fifty (50%) for Resident workers in the Post-construction Component of the Project.

7.2.2 Developer will seek to incorporate into the Affirmative Action Reports, information on its efforts and results with respect to the employment of Residents. In any event, Developer will report at least quarterly to the Agency the level of employment of Residents achieved by Developer.

#### 7.3 MBE and WBE Participation and Minority and Female Employment During the Post-Construction Component

7.3.1 During the Post-construction Component, the Developer will make good faith efforts, consistent with those described in sections III and IV above to

achieve the levels of MBE and WBE participation and minority and women employment described in this section.

- 7.3.2 Employment goals will be applicable to direct employees whether they are employed by the Developer, a property management firm affiliated with the Developer or a contractor.
- 7.3.3 The MBE and WBE goals shall apply to contracts for the procurement of direct commodities and services (those which are purchased or provided specifically for the operation of the Project).
- 7.3.4 With respect to any overlap in the activities identified in subsections 7.3.2 and 7.3.3, either employment or MBE/WBE goals shall be applicable at the election of the Developer.
- 7.3.5 The employment goals for minority employees for the Post-construction Component of the Project shall be: twenty-five percent (25%) Black, sixteen percent (16%) Hispanics and five percent (5%) Women.
- 7.3.6 The MBE/WBE goals for the Post-construction Component shall be: twenty five percent (25%) for MBE firms, five percent (5%) for WBE firms and fifty percent (50%) for Local Businesses.
- 7.3.7 Developer is responsible for collecting employment and MBE/WBE utilization statistics. This data, and a narrative describing the good faith efforts by the responsible entities to achieve compliance with section 7.3, will be submitted to the City on a quarterly basis, commencing with the date the City issues its certificate.
- 7.3.8 The Developer will include provisions in all relevant contracts specifying employment or MBE/WBE obligations, as applicable, and encouraging contractors to make all good faith efforts to achieve those goals.



SECTION VIII

MISCELLANEOUS PROVISIONS

- 8.1 The Plan shall be construed as an agreement between Developer and the City, and no third-party shall be entitled to enforce any of the provisions hereof.
- 8.2 Developer and the City agree that actions for the enforcement of the Plan pursuant to section V above may be brought only by the City and by no other party, whether or not the provisions hereof may be construed as benefitting any third party, and no party shall be construed as or have the rights of a third party beneficiary under the Plan.
- 8.3 The Plan shall be governed by and construed in accordance with the laws of the State of Illinois.
- 8.4 The terms of the Plan shall be binding upon the City, Developer, and its respective heirs, legal representatives, successors and assigns.
- 8.5 If any provision of the Plan, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the remainder of the Plan shall be construed as if each invalid part were never included herein and the Plan shall remain valid and enforceable to the fullest extent permitted by law.

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IN WITNESS WHEREOF, the parties hereto have executed or caused the Plan to be executed, all as of the date written above.

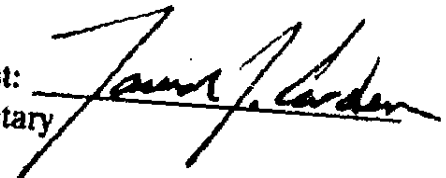
City of Chicago  
an  
Illinois municipal corporation

By:   
David R. Mosera  
Commissioner  
Department of Planning

Chicago Theatre Group,  
an  
Illinois not for profit corporation

By:   
Irving J. Markin  
Chairman

Attest:  
Secretary



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EXHIBIT D

## A PROJECT DESCRIPTION FOR THE GOODMAN THEATRE'S 1989-90 STUDENT SUBSCRIPTION SERIES

October 24, 1990

During the 1989-90 season, the Goodman Theatre is presenting a season of classics. Three of these classics are being shared with Chicago public high school students through the Goodman's 1989-90 Student Subscription Series. Due to increasing demand, this season's series has expanded to two free student matinees for each of the three productions, accommodating nearly 1,400 students and their teachers from 28 public high schools.

The Student Subscription Series is based on the importance of repeated sustained exposure for the participating students. All teachers are encouraged to bring their students to each play in the series to foster a better understanding of the process and art of theater.

The goal of the Student Subscription Series is to strive to make the unique resources of the theater an intrinsic part of the classroom curriculum. To that end, the Goodman has made several changes to the basic format of the Series that will increase each teacher's involvement in the program.

### THE FORMAT

The three classics in the 1989-90 Student Subscription Series are described in the enclosed attachment. The following format is being used for each production in the Series:

1. A Teacher Advisory Committee - Last season, a core group of teachers emerged as leaders. This group has been organized to meet after each production in the 1989-90 Series to evaluate and offer suggestions on the development and implementation of all facets of the program for the next production.

Teacher Seminar - This new component has the following agenda:

- a. A general introduction to the background and issues addressed in the current play.
- b. A discussion on the Goodman's specifically prepared materials with suggestions on the most effective way to incorporate them into the classroom curriculum in preparation for the student matinees.

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- c. A presentation by an artist from the production on the process of interpreting for the stage, from his or her perspective.
- d. A general open forum on the play, and the Goodman's Student Subscription Series program.

The Seminars are scheduled during the preview week for each of the three plays to allow four weeks of classroom preparation before the student matinees. After the late afternoon seminar, teachers are provided a light supper and tickets to attend that evening's preview performance and post-show discussion.

2. Classroom Discussion - Teachers are encouraged to bring Goodman Arts in Education Director Richard Pettengill into their classrooms before and after each matinee in the series to discuss various issues raised by the play, and how they relate to the high school curricula, and students' lives.
3. Student Matinees - Two matinees are being held for each of three Mainstage productions in the 1989-90 season. This increases the number of students and teachers that can be served for the entire program from 700 to nearly 1400.
4. Post-Show Discussion - Each matinee is followed by a discussion with the actors. This session gives the students a chance to interact with the actors and to ask questions about any aspect of theater production.
5. Half-Priced Tickets for Parents - This special feature was added this season because of previous requests from students.

## THE NEED

At this time there is very little theatrical activity in the Chicago public schools. Only 2/3 of the 60 Chicago public high schools have at least one class in speech or drama, usually in the area of public speaking. A much smaller percentage of these schools are involved in the actual production of a play.

This lack of dramatic curriculum is set against the backdrop of a national movement toward educational excellence. In 1985, Illinois passed educational reform legislation. At the annual Superintendent's Conference in September 1986, Illinois school administrators were told that as a result of this legislation, students should be able to:

1. understand the unique qualities of each of the fine arts.
2. identify significant works in the arts from major historical periods and how they reflect societies, cultures and civilizations, past and present.