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98-117927

Douglas E. Wambach  
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Chicago, IL 60606  
(312) 357 0800

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. COOK COUNTY RECORDER

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## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT is dated as of the 24th day of MAY, 1996, by and between THE CITY OF CHICAGO, a public body corporate (the "City"), and LASALLE BANK NI, an Illinois banking corporation ("LBNI").

98-117927

### RECITALS:

A. LBNI has agreed to make a loan (the "LBNI Loan") to Chicago Theater Restoration Associates, an Illinois limited partnership ("Borrower"), in the amount of \$1,950,000. The LBNI Loan is evidenced by a certain Mortgage Note (the "LBNI Note") of even date herewith made by Borrower and payable to the order of LBNI. The LBNI Loan is secured by a Junior Mortgage (the "LBNI Mortgage") of even date herewith recorded in the Office of Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on 6-3-96, 1996, as Document: 96417925, granting a second lien on certain real estate (the "Property") located in Chicago, Cook County, Illinois and legally described in Exhibit A hereto. As additional security for repayment of the LBNI Loan, Borrower has executed and delivered to LBNI an Assignment of Rents and Leases (the "LBNI Assignment of Rents") of even date herewith recorded in the Recorder's Office on 6-3-96, 1996 as Document 96417926, granting a first lien on all rents, issues, profits, revenues, income, security deposits, accounts and other receivables arising out of or from the ownership or operation of the Property (collectively, the "Rents"), including, without limitation, all amounts payable under that certain Chicago Theatre Lease dated December 20, 1995, between Borrower and Walt Disney

**BOX 393-CTI**

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Theatrical Productions Ltd. (the "Disney Lease") (the LBNI Note, the LBNI Mortgage, the LBNI Assignment of Rents and all other documents evidencing the LBNI Loan, securing repayment of the LBNI Loan or otherwise executed to induce LBNI to make the LBNI Loan are hereinafter collectively referred to as the "LBNI Loan Documents").

B. The City has previously made a loan (the "Chicago Loan") to Borrower in the amount of \$17,000,000. The Chicago Loan is evidenced by a certain Amended and Restated Promissory Note (the "Chicago Note") dated January 23, 1995, made by Borrower and payable to the order of the City. The Chicago Loan is secured by an Amended and Restated Mortgage, Security Assignment, Agreement and Assignment of Rents (the "Chicago Mortgage") dated January 23, 1995, recorded in the Recorder's Office on February 14, 1995, as Document 95106340 and encumbering the Property (the Chicago Note, the Chicago Mortgage and all other documents evidencing the Chicago Loan, securing repayment of the Chicago Loan or otherwise executed to induce the City to make the Chicago Loan are hereinafter collectively referred to as the "Chicago Loan Documents"). The LBNI Loan and the Chicago Loan are sometimes hereinafter each individually, referred to as a "Loan"; the LBNI Loan Documents and the Chicago Loan Documents are sometimes hereinafter each individually referred to as "Loan Documents."

C. Pursuant to the Disney Lease and the Workletter which is a part thereof, Borrower is required to perform certain Landlord's Work (as defined in said Workletter Agreement). The proceeds of the LBNI Loan are to be used by Borrower to pay for a part of such Landlord's Work. Pursuant to Paragraph 11 of the Chicago Mortgage, Borrower has sought the consent of the City to the Disney Lease and, by virtue thereof, consent to any material alterations to the Property constituting a part of Landlord's Work in compliance with Paragraph 2 of the Chicago Mortgage. The Chicago Note requires Borrower to make monthly debt service payments thereunder of Cash Flow (as defined in the Chicago Note), which if strictly enforced would not allow Borrower to make debt service payments with respect to the LBNI Loan. The City has determined it to be in its best interests as holder and beneficiary of the Chicago Loan Documents to consent to the Disney Lease (and by virtue thereof Landlord's Work to be performed thereunder), and, pursuant to Paragraph 11 of the Chicago Mortgage, to further consent to the LBNI Loan for financing Landlord's Work and to the liens and encumbrances that will be granted LBNI pursuant to the LBNI Loan Documents. The City has further determined it to be in its best interest to forbear in its right to receive payments of Cash Flow under the Chicago Note until all monetary obligations owing LBNI under the LBNI Loan Documents have been satisfied in full, all as more particularly hereinafter set forth in this Agreement.

D. As a condition precedent to LBNI's making of the LBNI Loan, and as a condition precedent to the City's consent to the Borrower's entry into the LBNI Loan, the parties hereto require that this Agreement be executed and delivered.

NOW, THEREFORE, to induce LBNI to make the LBNI Loan, and to induce the City to consent to the granting of the LBNI Mortgage and the LBNI Assignments of Rents, and for

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other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Incorporation of Recitals. The Recitals of this Agreement are incorporated herein and made a part hereof by this reference thereto.

2. The City's Consent: LBNI Subordination of Mortgage: LBNI's Representation.

(a) The City hereby reaffirms its consent to the execution and delivery by Borrower of the Disney Lease (and to performance by Borrower of Landlord's Work pursuant to the Workletter Agreement relating thereto) and further hereby consents to the execution and delivery and the recording or filing, as the case may be, by Borrower of the LBNI Loan Documents and acknowledges and agrees that the granting by Borrower of the LBNI Loan Documents and the incurrence of the liabilities and the granting of the liens and security interests described therein shall not constitute a breach or default under the Chicago Loan Documents. Notwithstanding the terms and provisions of the Chicago Note to the contrary, the City agrees to forbear in its right to receive Cash Flow debt service payments under the Chicago Note, with respect to Cash Flow first accruing from and after the date Cash Flow accrues in favor of LBNI under the LBNI Note, in favor of LBNI's right to receive payments of any and all principal, interest, fees, costs and other sums due or to become due LBNI under the LBNI Loan Documents.

(b) Except as otherwise provided in Paragraph 3 below, the lien and security interests in the Property created by the LBNI Mortgage and the other LBNI Loan Documents shall and are hereby made subject and subordinate to the lien and security interests created by each and every one of the Chicago Note, the Chicago Mortgage and the Chicago Loan Documents, to the full extent of the Chicago Loan and all sums evidenced and secured by the Chicago Loan Documents.

(c) LBNI represents and warrants to the City that LBNI has been granted no liens or security interests in the Property other than the liens and security interests that have been granted pursuant to the LBNI Loan Documents.

(d) LBNI shall not, without first obtaining the City's prior written approval, modify, amend or supplement the LBNI Loan Documents.

(e) Upon payment in full of the LBNI Loan, at the City's request, LBNI shall, to the extent assignable, assign to the City all of LBNI's interest in and to that certain (i) Assignment of Licenses, Permits, Plans, Specifications and Contracts dated on or about the date hereof, and (ii) any consents to such Assignment from any architect, contractor, engineer or consultant.

3. Priority of LBNI Assignment of Rents: The City's Representation.

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(a) The City agrees that the lien and security interests in the Rents from the Property created by the LBNI Assignment of Rents and the other LBNI Loan Documents shall be and are hereby made prior and superior to the lien and security interests in the Rents created by each and every one of the Chicago Mortgage and the other Chicago Loan Documents, to the full extent of the LBNI Loan and all sums evidenced and secured by the LBNI Loan Documents.

(b) The City agrees that, without the written consent of LBNI, it will not accept any payments of Cash Flow under the Chicago Note to the extent of the City's forbearance agreement in subparagraph 2(a) above from or on behalf of Borrower, until the LBNI Loan has been paid in full. The City further agrees that, absent an event of default, after the expiration of all notice and cure periods (including the cure period set forth in Paragraph 5 below), under the Chicago Loan Documents, it will not accept any payments, from any source whatsoever, from or on behalf of Borrower, until the LBNI Loan has been paid in full. Notwithstanding the immediately preceding sentence, the use and application of property insurance proceeds (other than rent loss or business interruption insurance proceeds) and awards from condemnation or eminent domain proceedings shall continue to be governed by paragraphs 8 and 9, respectively, of the Chicago Mortgage. Any such payments which may be made to the City in violation of this subparagraph 3(b) shall be held by the City in trust for LBNI and immediately forwarded to LBNI for application to the LBNI Loan obligations. The City agrees that, upon any foreclosure of the Chicago Mortgage or the granting of any deed in lieu of foreclosure, including a recording of the deed held in escrow for the benefit of the City pursuant to the Plan (as such term is defined in the Chicago Loan Documents), or in any other circumstance in which the City (or any assignee or designee or any other successor in interest as the holder or owner of the Chicago Loan Documents) becomes the fee owner of the Property, the City (or any such assignee or designee or any such successor in interest) will not terminate any lease or license of any portion of the Property (or any other source of the Rents) without LBNI's prior written consent. Furthermore, in such event the City (or any such assignee or designee or any such successor in interest) shall expressly take subject to (but not assume), be bound by and adhere to all of the terms and provisions of the LBNI Assignment of Rents.

(c) The City represents and warrants to LBNI that the City has been granted no direct liens or security interests in the Property to secure the Chicago Loan other than the liens and security interests that have been granted pursuant to the Chicago Mortgage and other Chicago Loan Documents.

4. Notices. The City shall give to LBNI prompt written notice of the occurrence of any default under or with respect to the Chicago Loan Documents concurrently with the giving of any such notice to Borrower. LBNI shall give to the City prompt written notice of the occurrence of any default under or with respect to the LBNI Loan Documents concurrently with the giving of any such notice to Borrower.

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5 Assignment By Lender. Either party hereto may, from time to time, at its discretion and with notice to the other party, assign or transfer any or all of its Loan, or any interest therein; and notwithstanding any such assignment or transfer or subsequent assignment or transfer thereof, this Agreement, and its application to such Loan, shall remain in full force and effect.

6. Forbearance and Right to Cure.

(a) LBNI hereby agrees that until the Chicago Loan has been paid to the City in full and the Chicago Loan Documents have been released, LBNI shall not: (i) without giving the City thirty (30) days prior written notice and an opportunity to cure the default of Borrower specified in such notice within such period, take any action of any kind to enforce any right or remedy of any kind provided for in the LBNI Assignment of Rents, whether at law or in equity, (ii) so long as there exists no Default under the Chicago Loan Documents and/or the City has not commenced a proceeding in foreclosure or deed in lieu of foreclosure, take any action of any kind to enforce any right or remedy under the LBNI Mortgage or the other LBNI Loan Documents, other than the LBNI Assignment of Rents, whether at law or in equity, specifically including, but not limited to, any proceeding seeking or contemplating foreclosure of the LBNI Mortgage, (iii) take any action to terminate or otherwise affect any lease of the Property (other than exercising the right to collect Rent thereunder pursuant to the LBNI Assignment of Rents) without the City's prior written consent. Said notice to the City may, at LBNI's election, be given concurrently with the delivery of notice of default to Borrower.

(b) The City hereby agrees that until the LBNI Loan has been paid to LBNI in full and the LBNI Loan Documents have been released, the City shall not, without giving LBNI thirty (30) days prior written notice and an opportunity to cure the default of Borrower specified in such notice within such period, take any action of any kind to enforce any right or remedy of any kind provided for in the Chicago Loan Documents, whether at law or in equity, and specifically including, but not limited to, any proceeding seeking or contemplating foreclosure of the Chicago Mortgage. Said notice to LBNI may, at the City's election, be given concurrently with the delivery of notice of default to Borrower.

7. Representation of No Default. The City represents and warrants to LBNI that there is currently no breach or default by Borrower under any of the Chicago Loan Documents, nor any event or circumstance that, with the giving notice or the passage of time or both, would constitute such a breach or default; provided, however, that in giving such representation and warranty the City shall not be deemed to have waived any right to receive Cash Flow debt service payments that may be owing under the Chicago Note with respect to Cash Flow realized by Borrower prior to the date hereof and with respect to which an accounting is in the process of being made by Borrower subject to review and concurrence of the City (the final determination with respect to which the City agrees will not be the subject of any asserted default of Borrower by the City).

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8. Notices. Any notices which may be given hereunder shall be deemed given if personally delivered and receipted for or two business days after being deposited in the United States mail, certified or registered mail, return receipt requested, properly addressed as follows:

To the City:

The City of Chicago  
City Hall, Room 1000  
Attn: Commissioner, Department of Planning  
and Development

With a copies to:

Corporation Counsel  
City of Chicago  
City Hall, Room 511  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attn: Finance and Economic Development Division

Burke, Warren & MacKay, P.C.  
225 West Washington Street  
24th Floor  
Chicago, Illinois 60606  
Attn: Richard Burke, Esq.

To Lender:

LaSalle Bank NI  
3201 North Ashland  
Chicago, Illinois 60657  
Attn: Mr. Michael Gardner

With a copy to:

Schwartz Cooper Greenberger & Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attention: Daniel J. Kopp, Esq.

Either party may at any time and from time to time (by providing notice to the other party in the manner set forth above) designate a different address to which such notices may be sent.

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9. Waiver. LBNI hereby waives (i) any requirement that the City marshal the property and estates encumbered by the liens and security interests of the Chicago Loan Documents and (ii) until the Chicago Loan has been paid in full, any right of subrogation arising out of any payments made by LBNI to the City on account of the City Loan Documents.

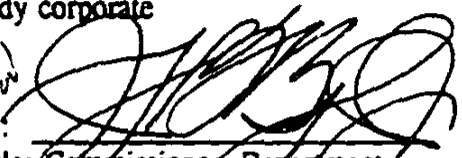
10. No Amendment. Neither party hereto shall amend or modify the Loan Documents of such party without obtaining the prior written consent of the other party.

11. Binding Effect. This Agreement shall be binding upon the City and LBNI and their respective successors and assigns, and shall inure to the benefit of the City and LBNI and their respective successors and assigns.

12. Governing Law, Interpretation. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the City and LBNI shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the City and LBNI as of the day and year first above written.

THE CITY OF CHICAGO, a public  
body corporate

By:   
Title: Commissioner, Department  
of Planning and Development

LASALLE BANK NI, a national  
banking association

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

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9. Waiver. LBNI hereby waives (i) any requirement that the City marshal the property and estates encumbered by the liens and security interests of the Chicago Loan Documents and (ii) until the Chicago Loan has been paid in full, any right of subrogation arising out of any payments made by LBNI to the City on account of the City Loan Documents.

10. No Amendment. Neither party hereto shall amend or modify the Loan Documents of such party without obtaining the prior written consent of the other party.

11. Binding Effect. This Agreement shall be binding upon the City and LBNI and their respective successors and assigns, and shall inure to the benefit of the City and LBNI and their respective successors and assigns.

12. Governing Law, Interpretation. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the City and LBNI shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the City and LBNI as of the day and year first above written.

THE CITY OF CHICAGO, a public  
body corporate

LASALLE BANK NI, <sup>an Illinois</sup> ~~a national~~  
banking association ~~corporation~~

By: \_\_\_\_\_  
Title: Commissioner, Department  
of Planning and Development

By: [Signature]  
Title: Vice President

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## ACKNOWLEDGEMENT

The undersigned acknowledges receipt of a copy of the foregoing Intercreditor Agreement, waives notice of acceptance thereof and agrees to be bound by the terms and provisions thereof, to mark its respective books and records so as to clearly indicate the respective priorities of the Chicago Loan and the LBNI Loan in accordance with the terms of such Intercreditor Agreement, to make no payments or distributions contrary to the terms and provisions thereof, and to do every other act and thing necessary or appropriate to carry out such terms and provisions. In the event of any violation of any of the terms and provisions of the foregoing Intercreditor Agreement by reason of any act or omission within the direct or indirect control of the undersigned, then, at the election of either the City or LBNI, any and all obligations of the undersigned to such party shall forthwith become due and payable.

Dated as of May 24, 1996.

Chicago Theater Restoration Associates, an  
Illinois limited partnership

By: Civic Preservation Foundation, an Illinois not-for-profit corporation, its general partner

By: 

Title: PRESIDENT

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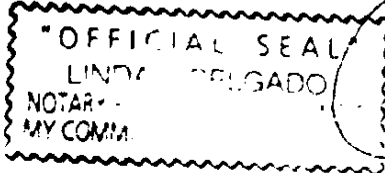
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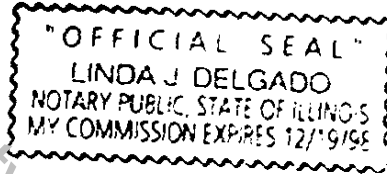
STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, Linda J. Delgado, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J.F. Boyle, Jr., the Commissioner of Planning and Development of THE CITY OF CHICAGO, a public body corporate (the "City") and, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Commissioner, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21<sup>st</sup> day of May, 1996.



*Linda J. Delgado*  
Notary Public



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public, in and for said County, in the State of LASALLE BANK NI, a national banking association ("LBNI"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of LBNI, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Notary Public

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STATE OF ILLINOIS     )  
                                  ) ss.  
COUNTY OF COOK     )

I, \_\_\_\_\_, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, the Commissioner of Planning and Development of THE CITY OF CHICAGO, a public body corporate (the "City") and, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Commissioner, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

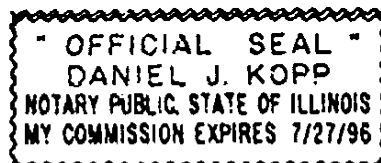
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS     )  
                                  ) ss.  
COUNTY OF COOK     )

I, Daniel J. Kopp <sup>an Illinois corporation</sup> a Notary Public, in and for said County, in the State of LASALLE BANK NI, a national banking association ("LBNI"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of LBNI, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30th day of May, 1996.

Daniel J. Kopp  
Notary Public



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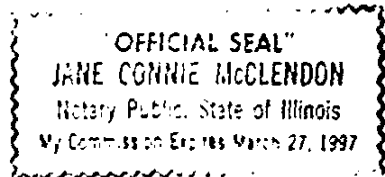
STATE OF ILLINOIS     )  
  )ss.  
COUNTY OF COOK     )

I, Jane Connie McCleendon, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Daniel J. Skoda, the <sup>President</sup> of CIVIC RESTORATION FOUNDATION, an Illinois not-for-profit corporation (the "Corporation") the general partner of CHICAGO THEATER RESTORATION ASSOCIATES, an Illinois limited partnership (the "Partnership") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, as general partner of said Partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 24 day of May, 1996.

Jane Connie McCleendon  
NOTARY PUBLIC

(SEAL)



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1

The South 60 feet of Lots 1 to 3 and all of Lots 4 to 10 in Block 9 in Fort Dearborn Addition to Chicago, in the Southwest 1/4 of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois; and

#### PARCEL 2

Lots 1, 2 and 3 in Block 9 in Fort Dearborn Addition to Chicago (except the South 60 feet of each said lots) in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois;

P.I.N. 17-10-305-002-0000

and

17-10-305-001-0000

175-177 N. State Street  
Chicago, Illinois 60601

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