

UNOFFICIAL COPY 99108848

7442/0343 03 001 Page 1 of 288

1999-02-02 15:13:02

Cook County Recorder 1155.00



99108848

AMENDED AND RESTATED  
BLOCK 35, CENTRAL LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
d/b/a THE GOODMAN THEATRE

Property of Cook County Clerk's Office

288  
SN  
P

7796665 D2 10F7

Prepared by, and after recording,  
please return to:

Mark Lenz  
Assistant Corporation Counsel  
Department of Law  
30 N. LaSalle Street  
Room 1610  
Chicago, IL 60602

BOX 333-CTI

AMENDED AND RESTATED  
BLOCK 35, CENTRAL LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
d/b/a THE GOODMAN THEATRE

TABLE OF CONTENTS

RECITALS . . . . . 1

DEFINITIONS . . . . . 9

SECTION I . . . . . 18  
INCORPORATION OF RECITALS AND DEFINITIONS . . . . . 18

SECTION II . . . . . 18  
REPRESENTATIONS AND WARRANTIES . . . . . 18  
2.1 Representations and Warranties of Goodman . . . . . 22  
2.2 Representations and Warranties of the City . . . . . 22  
2.3 Survival of Representations and Warranties . . . . . 23

SECTION III . . . . . 23  
LEASE OF THE PROPERTY . . . . . 23  
3.1 Assemblage of the Property . . . . . 23  
3.2 Leasing of the Property and Conveyance of the  
Harris and Selwyn Theaters . . . . . 25  
3.3 Possession of the Property . . . . . 31  
3.4 Closing Documents . . . . . 34  
3.5 Real Estate Taxes . . . . . 36  
3.6 Recordation of Ground Leases . . . . . 36

SECTION IV . . . . . 36  
THE CONSTRUCTION OF THE PROJECT . . . . . 36  
4.1 Demolition of the Garrick Garage;  
Site Preparation Work . . . . . 36  
4.2 Scope of the Project . . . . . 38  
4.3 Development Parameters . . . . . 40  
4.4 Planned Development . . . . . 45  
4.5 Right of Entry . . . . . 45

4.6	Submission of Construction Documents; Site Preparation Work . . . . .	47
4.7	Limited Applicability of DPD's Approval . . . . .	50
4.8	Financing the Project . . . . .	51
4.9	Relocation of Utilities . . . . .	83
4.10	Commencement and Completion of the Project . . . . .	83
4.11	Certificate of Completion . . . . .	84
4.12	Barricades . . . . .	85
4.13	Signs and Public Relations . . . . .	86
4.14	Insurance . . . . .	86
4.15	Prohibition Against Unpermitted Encumbrances . . . . .	95
4.16	Mortgagees Not Obligated to Construct . . . . .	96
<b>SECTION V</b>		<b>98</b>
	<b>PERFORMANCE</b> . . . . .	<b>98</b>
5.1	Time of the Essence . . . . .	98
5.2	Permitted Delays . . . . .	98
5.3	Breach . . . . .	99
5.4	Waiver and Estoppel . . . . .	109
5.5	Indemnity . . . . .	110
5.6	Access to the Property . . . . .	111
5.7	City's Right to Inspect Records . . . . .	111
<b>SECTION VI</b>		<b>112</b>
	<b>EMPLOYMENT OPPORTUNITY OBLIGATION</b> . . . . .	<b>112</b>
6.1	Employment Opportunity . . . . .	112
6.2	City Resident Employment Requirement . . . . .	115
6.3	Goodman's MBE/WBE Commitment . . . . .	119
6.4	Pre-Construction Meeting; Monitoring Requirements. . . . .	124
<b>SECTION VII</b>		<b>125</b>
	<b>PUBLIC POLICY COVENANTS AND POST-CERTIFICATE REQUIREMENTS</b> . . . . .	<b>125</b>
7.1	Goodman's Public Policy Covenants . . . . .	125
7.2	Use And Performance Requirements . . . . .	126
7.3	Employment, Creation and Retention . . . . .	128
7.4	Agreement To Provide Assistance To The Chicago School Reform Board Of Trustees and To Undertake Community Programs . . . . .	129
7.5	Status Reports . . . . .	129
7.6	Real Estate Taxes And Other	

Governmental Charges . . . . . 130

**SECTION VIII . . . . . 133**

**MISCELLANEOUS PROVISIONS . . . . . 133**

8.1 Entire Agreement . . . . . 133

8.2 Assignability and Transfer . . . . . 134

8.3 Conflict of Interest - City's Representatives  
Not Individually Liable . . . . . 134

8.4 Disclosure . . . . . 135

8.5 Survival . . . . . 135

8.6 Mutual Assistance . . . . . 135

8.7 Cumulative Remedies . . . . . 136

8.8 Disclaimer . . . . . 136

8.9 Notices . . . . . 136

8.10 Headings . . . . . 137

8.11 Governing Law . . . . . 137

8.12 Recordation of the Agreement . . . . . 138

8.13 No Third Party Beneficiary . . . . . 138

8.14 Successors and Assigns . . . . . 138

8.15 Severability . . . . . 138

8.16 Counterparts . . . . . 139

8.17 Business Economic Support Act . . . . . 139

8.18 Approvals . . . . . 139

8.19 Exhibits. . . . . 140

Propert Cook County Clerk's Office

AMENDED AND RESTATED  
BLOCK 35, CENTRAL LOOP PROJECT  
REDEVELOPMENT AGREEMENT  
CHICAGO THEATRE GROUP  
d/b/a THE GOODMAN THEATRE

This Amended and Restated Redevelopment Agreement ("Agreement"), dated as of April 17, 1998 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 Theatre, having its principal office at 200 South Columbus Drive, Chicago, Illinois 60603 ("Goodman").

## 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, which has been succeeded in interest by the Community Development Commission ("Commission").

C. On March 20, 1979, the Commission designated an area within the corporate boundaries of the City as a blighted commercial area to be known as "Blighted Commercial Area North Loop" ("Original Redevelopment Area"), and on March 20, 1979, approved a redevelopment plan ("Redevelopment Plan") for the Original 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 original 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. An ordinance adopting the North Loop Tax Increment Redevelopment Plan and Project ("North Loop TIF Plan"), an ordinance establishing the North Loop Tax Increment Redevelopment Project Area (the "North Loop Project Area") and an ordinance authorizing tax increment allocation financing for the North Loop Project Area ("TIF Adoption Ordinance") were each approved by the City Council on June 20, 1984. The North Loop TIF Plan, as previously amended in September, 1987, was amended and supplemented by, and incorporated into, that certain Central Loop Tax Increment Financing Redevelopment Project and Plan ("Central Loop TIF Plan") by ordinance of the City Council adopted on February 7, 1997. Also by ordinances of City Council adopted on February 7, 1997, there was established the "Central Loop Project Area" resulting from expanding the North Loop Project Area by including an Added Area,

and there was approved and adopted tax increment allocation financing for the Added Area within the Central Loop Project Area. The Redevelopment Plan and the North Loop TIF Plan, as amended by Part B of (and otherwise supplemented by) the Central Loop TIF Plan (sometimes herein called the "TIF Plan"), are collectively referred to herein as the "Redevelopment Documents".

D. The City is authorized, subject to the provisions and requirements of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.1-1 et seq. (1994), as amended from time to time ("TIF Act"), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

E. The Redevelopment Documents set forth the City's general objectives and plans for the Central Loop Project Area, including the Original Redevelopment Area or the North Loop Project Area.

F. The Agreement is an amendment and restatement of that certain agreement entered into by and between the City and Goodman known as "Block 35, North Loop Project Redevelopment Agreement, Chicago Theater Group d/b/a/ The Goodman Theater" dated October 24, 1990 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") on October 31, 1990 as document #90532208 ("Original Agreement"). It is the express



intention of the City and Goodman, as evidenced by each entering into the Agreement, that the Amendments to the North Loop TIF Plan provided for in Part B of the Central Loop TIF Plan shall be effective as to the Original Agreement, as amended and restated in the Agreement.

G. The City owns three (3) parcels of real estate located within Block 35 of the Original Redevelopment Area, which Block is generally bounded on the west by North Clark Street, on the east by North Dearborn Street, on the south by West Randolph Street and on the north by West Lake Street ("Block 35"). The parcels are legally described on Exhibit A attached hereto. One parcel is presently improved with two theaters commonly described as the Harris and Selwyn theaters ("Harris and Selwyn Theaters"), the facades and other portions of which theaters are 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 with the Recorder's Office as document #265-5694. This parcel shall be referred to herein as the "Harris and Selwyn Parcel". The second parcel is a vacant parcel which was formerly improved with the Woods Theater and is referred to herein as the "Woods Parcel". The third parcel is presently improved with a four story parking garage commonly known as the "Garrick Garage"

and is referred to herein as the "Garrick Parcel". In addition, the City intends to acquire the Strip (as defined in subsection 3.1 below), the reversionary rights to that certain north/south alley located to the west of and adjacent to the Strip ("Alley") and that part of Couch Place located within Block 35, all as legally described in Exhibit A. For purposes of the Agreement, the Harris and Selwyn Parcel (exclusive of the Harris and Selwyn Theaters), the Woods Parcel and the Garrick Parcel, and if so acquired by the City, the Strip, the Alley and Couch Place, shall collectively constitute the Property.

H. Pursuant to the terms of the Agreement, the Goodman shall redevelop the northerly approximately 40,833 square feet of the Property, inclusive of the Harris and Selwyn Parcel, as legally described on Exhibit A ("Theater Parcel") as the headquarters of The Goodman Theatre. As more fully described herein, the redevelopment of the Theater Parcel will include the rehabilitation and renovation of the historic facades of the Harris and Selwyn Theaters, the remodeling of the interior of the Harris and Selwyn Theaters with an approximately 400 seat studio theater, rehearsal rooms, administrative offices, and a costume shop, and the undertaking of new construction on other areas of the Theater Parcel, resulting in the development of an

approximately 800 seat main theater, box office and other facilities ("Theater Project"). It is anticipated that an entity comprised of the Goodman and other parties will redevelop the southerly approximately 12,974 square feet of the Property as legally described on Exhibit A ("Restaurant/Retail Parcel") as a first class, restaurant/ retail/office facility compatible with the Theater Project ("Restaurant/Retail Project"), upon the terms and conditions described herein.

I. The Property will be leased to Goodman for the uses and purposes, and upon the terms and conditions, as more fully described in the Agreement. There will be two separate long term ground leases ("Ground Leases") between the City and the Goodman. The Theater Parcel will be leased to Goodman for redevelopment and use by Goodman of the Theater Project ("Theater Ground Lease"). The Restaurant/Retail Parcel will be leased to Goodman for redevelopment and use of the Restaurant/Retail Project ("Restaurant/Retail Ground Lease"). Subject to the requirements of the Agreement, Goodman will have the right to sublease its leasehold interest in the Restaurant/Retail Parcel under a sublease acceptable to the DPD ("Sublease"), to an entity approved by the Commissioner (as defined below) comprised of

# UNOFFICIAL COPY

99108848

Goodman and other parties ("Restaurant/Retail Developer") for the purpose of developing and operating the Restaurant/Retail Project.

J. The City (as further described in the Agreement) has agreed to pay for or reimburse Goodman for certain eligible Redevelopment Project Costs (as hereinafter defined) in conjunction with certain site preparation work affecting the Property (as described in subsection 4.8(a)(2) below) and the undertaking of the Theater Project and the Restaurant/Retail Project, utilizing, in part, Incremental Taxes (as hereinafter defined) collected as a result of the TIF Adoption Ordinance and the proceeds derived from the sale of City of Chicago Tax Increment Allocation Bonds (Central Loop Redevelopment Project), Series 1997 ("Bonds").

K. Goodman and the City acknowledge that the implementation of the policies and provisions described in the Redevelopment Documents and the Agreement will be of mutual benefit to Goodman and the City.

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

# UNOFFICIAL COPY

99108848

## DEFINITIONS

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

**Affidavits:** Those certain affidavits executed and delivered by Goodman as required by the City and consisting of an Economic Disclosure Statement, Anti-Scofflaw Affidavit, Certification Regarding Lobbying and any other customary affidavit or certification required by the City in connection with the Agreement and the City's undertaking to provide the City's Financial Contribution (as hereinafter defined).

**Affiliate:** Any person or entity directly or indirectly controlling, controlled by or under common control with Goodman.

**Agreement to Provide Assistance to the Chicago School Reform Board of Trustees and to Undertake Community Programs:** That certain agreement entered into between the City and Goodman requiring Goodman to provide certain assistance to the Chicago School Reform Board of Trustees and to Undertake Community Programs, substantially in the form attached hereto as Exhibit K.

**Block 35:** That certain block located in the Original Redevelopment Area and the Central Loop Redevelopment Area bounded on the west by North Clark Street, on the east by North Dearborn

# UNOFFICIAL COPY

99108848

Street, on the south by West Randolph Street, and on the north by West Lake Street.

**Bonds:** The meaning set forth in Recital J.

**Central Loop Project Area:** The meaning set forth in Recital C.

**Central Loop TIF Plan:** The meaning set forth in Recital C.

**Certificate:** The certificate of completion to be issued by the City upon completion of the Theater Project and the Restaurant/Retail Project, as the case may be, pursuant to subsection 4.11.

**City:** The City of Chicago, an Illinois municipal corporation.

**Commission:** The Community Development Commission of the City of Chicago.

**Commissioner:** The Commissioner of Planning and Development of the City of Chicago.

**Commitment:** The meaning set forth in subsection 4.8(a)(1).

**Completion:** The substantial completion of the Theater Project or the Restaurant/Retail Project, as the case may be. The pertinent project shall be considered substantially complete when the improvements and all common or public areas of the pertinent project are substantially finished and ready for use and occupancy for the purpose intended.

**Covenant of Performance:** As defined in subsection 4.8(a)(2).

**Design Plans:** Collectively, the design development plans for the Theater Project and the Restaurant/Retail Project, to be approved by the DPD as provided for in subsection 4.6.

**Development Manager:** Mesirow Stein Real Estate Inc., an Illinois Corporation.

**DPD:** The City of Chicago Department of Planning and Development, and any successor department or agency thereto.

**Escrow:** That certain construction escrow created by the parties pursuant to the provisions described in subsection 4.8(g) below.

**First Leasehold Mortgage:** The meaning set forth in subsection 4.8(a)(1).

**First Leasehold Mortgage Note:** The meaning set forth in subsection 4.8(a)(1).

**Garrick Parcel:** That certain parcel located on Block 35 which is presently owned by the City and improved by the Garrick Garage, as legally described on Exhibit A attached hereto.

**General Contractor:** That general or prime contractor meeting the prior approval of the City hired by Goodman or the Restaurant/Retail Developer, as the case may be, as general

contractor to undertake the completion of the Theater Project or the Restaurant/Retail Project.

**Goodman:** The Chicago Theatre Group, an Illinois not-for-profit corporation d/b/a The Goodman Theatre.

**Ground Leases:** Collectively, the Theater Ground Lease and the Restaurant/Retail Ground Lease, respectively, entered into by and between the City and Goodman granting a leasehold interest to Goodman in that portion of the Property consisting of the Theater Parcel and the Restaurant/Retail Parcel, respectively, as otherwise described in Recital I, upon the terms and conditions described therein.

**Harris and Selwyn Parcel:** That certain parcel located on Block 35 which is presently owned by the City and improved by the Harris and Selwyn Theaters, and which is legally described on Exhibit A attached hereto.

**Harris and Selwyn Theaters:** The meaning set forth in Recital G.

**Incremental Taxes:** Ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4.4-8(b) of the TIF Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into a special



# UNOFFICIAL COPY

99108848

tax allocation fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

**Inspector:** The independent inspector or inspectors selected and employed by the City to conduct periodic inspections of the Theater Project and the Restaurant/Retail Project, as the case may be, as more fully described in subsection 4.8(g).

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

**Lender:** The meaning set forth in subsection 4.8(a)(1).

**Lender Financing:** The meaning set forth in subsection 4.8(a)(1).

**Loan Agreement:** The meaning set forth in subsection 4.8(a)(1).

**North Loop Project Area:** The meaning set forth in Recital C.

**North Loop TIF Plan:** The meaning set forth in Recital C.

**Project:** Collectively, the Theater Project and the Restaurant/Retail Project.

**Property:** Those certain parcels of land located on Block 35 presently owned by the City or, subject to the provisions of subsection 3.1 below, which are to be acquired by the City on Block 35, being comprised of the Harris and Selwyn Parcel exclusive of the (Harris and Selwyn Theaters), the Woods Parcel,

the Garrick Parcel, the Strip (as defined in subsection 3.1), and the north/south alley and that part of Couch Place located on Block 35, all as legally described on Exhibit A attached hereto.

**Recorder's Office:** The Office of the Recorder of Deeds of Cook County, Illinois.

**Redevelopment Documents:** The Redevelopment Plan and the North Loop TIF Plan, as amended by Part B of, and otherwise supplemented by, the Central Loop TIF Plan. 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 Property for the purposes contemplated by the Agreement; (ii) substantially alter the schedule for construction of the Theater Project or the Restaurant/Retail Project, as the case may be; or (iii) impose additional substantial financial burdens on Goodman.

**Redevelopment Project Costs:** Redevelopment project costs as defined in Section 5/11-74.403(q) of the TIF Act, as amended from time to time, that are included in the budget set forth in the TIF Plan or otherwise referenced in such Plan.

**Restaurant/Retail Developer:** An entity approved by the Commissioner comprised of Goodman and other parties which shall sublease the Restaurant/Retail Parcel from Goodman for the purpose of development and operation of the Restaurant/Retail Project,

upon the terms and conditions as provided for in the Agreement and the Restaurant/Retail Ground Lease.

**Restaurant/Retail Ground Lease:** The meaning set forth in Recital I.

**Restaurant/Retail Parcel:** A rectangular parcel of approximately 12,974 square feet situated on the southerly portion of the Woods and Garrick Parcels, as legally described on Exhibit A attached hereto.

**Restaurant/Retail Project:** A five-story and basement, first class, restaurant/retail/office facility (with limited office uses for arts-related entities or administrative offices for Goodman or restaurant/retail tenants occupying space at the Restaurant/Retail Parcel) which may be developed and constructed by the Restaurant/Retail Developer on the Restaurant/Retail Parcel pursuant to the terms and conditions of the Sublease derived from Goodman under the Restaurant/Retail Ground Lease, as more fully described in subsection 4.2(b) of the Agreement.

**Schedule:** The schedule for the dates of completion of various tasks related to the Theater Project or the Restaurant/Retail Project, as the case may be, which is attached hereto as Exhibit

G, as revised and updated from time to time pursuant to the provisions of the Agreement.

**Subsequent Developer:** That certain entity or entities which shall develop and/or acquire the Theater Parcel or Restaurant/Retail Parcel from the City in the event of a default under the Agreement or breach of the Theater Ground Lease or Restaurant/Retail Ground Lease by Goodman, as more specifically described in subsection 5.3(d).

**Sublease:** The meaning set forth in Recital I.

**Theater Ground Lease:** The meaning set forth in Recital I.

**Theater Parcel:** The Harris and Selwyn Parcel and the northerly approximately 295 feet of the Woods and Garrick Parcels, together (subject to subsection 3.1 below) with the Strip, the Alley and that part of Couch Place lying within Block 35, all as legally described in Exhibit A attached hereto.

**Theater Project:** The rehabilitation, renovation and preservation of the historic facade of the Harris and Selwyn Theaters, the remodeling of the interior of the Harris and Selwyn Theaters with an approximately 400 seat studio theater, rehearsal and costume storage rooms and offices, and the construction of an approximately 800 seat main theater, box office and other facilities and improvements by Goodman as more fully described in

subsection 4.2(a) of the Agreement, pursuant to the requirements described in Exhibit L attached hereto and the Working Drawings and Specifications for the Theater Project to be approved by the Landmarks Commission and the DPD in accordance with subsection 4.6.

**TIF Act:** The Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.1-1, et seq. (1996), as amended from time to time.

**TIF Funded Improvements:** Those activities and improvements undertaken with respect to the Theater Project and the Restaurant/Retail Project which: (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the TIF Plan, and (iii) the City has agreed to pay for out of the City's Financial Contribution, subject to the terms of the Agreement.

**TIF Plan:** The meaning set forth in Recital C.

**Woods Parcel:** That certain vacant parcel located on Block 35 which is owned by the City and was formerly improved by the Woods Theater, as legally described on Exhibit A attached hereto.

## SECTION I

### INCORPORATION OF RECITALS AND DEFINITIONS

The recitals and definitions set forth above constitute an integral part of the Agreement and are 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 Goodman.

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

- (a) Goodman 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 Goodman's knowledge, threatened against Goodman or any Affiliate which could: (i) affect the ability of Goodman to perform its obligations pursuant to and as contemplated by the terms and provisions of the Agreement and the Redevelopment Documents; or (ii)

# UNOFFICIAL COPY

99108848

materially affect the operation or financial condition of Goodman.

- (c) The execution, delivery and performance by Goodman 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 Goodman or any Affiliate is a party or may be bound or affected, or a violation of any law or court order which may affect the Property, any part thereof, any interest therein or the use thereof.
- (d) The parties executing the Agreement on behalf of Goodman 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 Property by Goodman will 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 of record or any agreement affecting the Property or any part thereof.

# UNOFFICIAL COPY

99108848

- (f) Except as otherwise provided in the Agreement, and specifically as described in subsection 4.15 below, Goodman shall not, without the prior written consent of the DPD, which the DPD may withhold in its sole discretion: (i) grant, suffer or permit any lien, claim or encumbrance upon the Property or any portion thereof; (ii) permit or suffer any levy, attachment, claim or restraint to be made affecting the Property or any portion thereof; or (iii) enter into any transaction not in the ordinary course of business of Goodman which materially or adversely affects Goodman's ability to pay its debts as such may then exist or mature.
- (g) Goodman shall utilize, and shall cause the Restaurant/Retail Developer to utilize, the Property solely for the uses permitted by the terms of the Agreement, the Redevelopment Documents, and the applicable Ground Lease.
- (h) Goodman shall comply with the terms of: (1) the Affidavits; (2) the Employment Opportunity Obligations described in Section VI of the Agreement; (3) the Covenant of Performance; (4) the Agreement to Provide Assistance to the Chicago School Reform Board of



# UNOFFICIAL COPY

Trustees and To Undertake Community Programs; and (5) those certain public policy covenants described in subsection VII below. Goodman further covenants that its headquarters and main stage theater shall be, upon completion of the Theater Project, located at the Theater Parcel.

- (i) Goodman shall rehabilitate and renovate the facades of the Harris and Selwyn Theaters to preserve their historic and architecturally significant features in accordance with their status as designated City landmarks and in accordance with the landmark requirements described on Exhibit L attached hereto and Working Drawings and Specifications for the Theater Project (as defined in subsection 4.6 below) approved by the DPD and the Landmarks Commission.
- (j) Goodman shall use the Theater Project solely for the presentation of theatrical, cultural and entertainment activities.
- (k) Goodman shall operate the Theater Project in accordance with the standards of a first class live theatrical organization and shall possess full artistic freedom in

99108848

99108849

# UNOFFICIAL COPY

the presentation of theatrical and cultural activities at the theaters.

- (1) The Restaurant/Retail Project, if developed and constructed pursuant to the Agreement, will be utilized and operated by the Restaurant/Retail Developer to provide first class restaurant and retail operations (with limited office space usage intended for arts-related entities or administrative offices for the Goodman or restaurant and retail tenants located at the Restaurant/Retail Parcel compatible with the theatrical, cultural and entertainment activities of the Theater Project.)

## 2.2 Representations and Warranties of the City.

To induce Goodman to execute the Agreement and perform the obligations of Goodman hereunder, the City hereby represents and warrants to Goodman 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 Harris and Selwyn Parcel

# UNOFFICIAL COPY

(and the Harris and Selwyn Theaters), the Woods Parcel, and the Garrick Parcel and with regard to the north/south alley and that part of Couch Place located on Block 35, the City holds a servitude in trust for use by the public, subject to those permitted exceptions described in Exhibit B attached hereto.

## 2.3 Survival of Representations and Warranties.

Goodman 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

### LEASE OF THE PROPERTY

3.1 Assemblage of the Property. The City presently owns in fee simple the Harris and Selwyn Parcel, the Woods Parcel and the Garrick Parcel (subject to an interim lease with the former owner and current operator of the Garrick Garage which the City has the right to and will terminate prior to and in connection with

# UNOFFICIAL COPY

entering into the Ground Leases with Goodman). Subsequent to the execution date of the Agreement, the City shall use its best efforts to acquire (by eminent domain proceedings if necessary) fee simple title to that certain approximately 1 foot x 183 foot strip of land adjacent to and west of the Harris and Selwyn Parcel (the "Strip") as well as all of the reversionary rights to that certain north-south alley located to the west of and adjacent to the Strip (the "Alley") and that certain east/west alley located on Block 35 known as Couch Place ("Couch Place"). Upon the acquisition of the Strip and the reversionary rights to the Alley and Couch Place, the City shall take all appropriate steps to seek passage of an ordinance or ordinances by the City Council of the City vacating the Alley and Couch Place. Upon the vacation of the Alley and Couch Place by the City, the City shall record one copy of each vacation ordinance with the Recorder's Office.

In the event that the City is unsuccessful in acquiring the Strip and the reversionary rights in the Alley and Couch Place as described in this subsection 3.1, the City shall deliver written notice of such to Goodman. Within twenty (20) days of the receipt of said notice, Goodman, at its option, may choose to terminate the Agreement by written notice to the City. At such point, the City and Goodman shall be under no further obligation to the other

# UNOFFICIAL COPY

party. If, however, the City does not receive written notice of termination from Goodman by the expiration of said twenty (20) day period, the Agreement shall be deemed to remain in full force and effect.

For purposes of the Agreement, the Harris and Selwyn Parcel (exclusive of the Harris and Selwyn Theaters), the Woods Parcel and the Garrick Parcel, and in addition, if so acquired by the City, the Strip, the Alley and Couch Place shall collectively constitute the "Property."

### 3.2 Leasing of the Property and Conveyance of the Harris and Selwyn Theaters.

(a) Theater Ground Lease. The City shall lease the Theater Parcel to the Goodman for the term of 99 years at a base rental of \$1.00 per year pursuant to the Theater Ground Lease substantially in the form attached hereto as Exhibit C-1. The Theater Ground Lease shall, in addition to the provisions of the Agreement, be subject to:

1. Covenants and restrictions set forth in the Theater Ground Lease, including, but not limited to, Goodman's representations described in paragraphs (g)-(1) of subsection 2.1 above and the provisions described in subsections 4.15 and 5.3 below and Section VII below.

# UNOFFICIAL COPY

2. The Redevelopment Documents affecting the Theater Parcel.
3. The permitted exceptions in an ALTA leasehold insurance policy as are described on Exhibit B attached hereto.
4. Taxes for the current year.
5. Title objections caused or suffered by Goodman or those claiming by, through or under Goodman.

In addition, the Theater Parcel shall be leased to Goodman 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, or to the physical condition of any improvements located thereon. It shall be the sole responsibility of Goodman, at its sole expense (beyond the funds allocated by the City for site preparation work associated with the Property as described in subsection 4.1 below), to investigate and determine the soil and environmental condition existing in the Property. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Property will be utilized, then it shall be the sole responsibility and obligation of Goodman to take such action as may be necessary to place the soil and environmental condition of the Property in a condition entirely suitable for the Theater Project.

# UNOFFICIAL COPY

(b) Conveyance of the Harris and Selwyn Theaters. In accordance with the delivery of possession of the Theater Parcel from the City to Goodman as further described in subsection 3.3(a) below, the City shall deliver to Goodman a quitclaim deed conveying all of the City's right, title and interest in the Harris and Selwyn Theaters to Goodman. The Harris and Selwyn Theaters shall be conveyed to Goodman "AS IS" and "WHERE IS" with no warranty as to the physical condition of the Harris and Selwyn Theaters. It shall be the responsibility of Goodman to renovate the facades and remodel the interior of the Harris and Selwyn Theaters in accordance with the terms and provisions of the Agreement and the Theater Ground Lease.

(c) Restaurant/Retail Ground Lease. The City shall lease the Restaurant/Retail Parcel to the Goodman pursuant to the Restaurant/Retail Ground Lease substantially in the form attached hereto as Exhibit C-2. Goodman shall have the right to sublease its leasehold interest in the Restaurant/Retail Parcel to the Restaurant/Retail Developer pursuant to the Sublease for a term not to exceed fifty (50) years. The terms of the Sublease shall be acceptable to the DPD in its sole discretion. In conjunction with DPD's approval of the Sublease, the DPD shall be provided with an acceptable Affidavit from the Restaurant/Retail Developer. The Sublease shall provide that the Restaurant/Retail Developer

99108848

# UNOFFICIAL COPY

shall pay to the City, as percentage rent ("Percentage Rent") for the Restaurant/Retail Parcel during the Term of the Sublease, in accordance with the following:

- (a) an amount equal to fifty percent (50%) of annual "Net Operating Cash Flow" after payment or allowance for (i) annual debt service on all obligations to third parties secured by a mortgage on the leasehold interest granted hereunder and the subleasehold interest under the Sublease with respect to the Restaurant/Retail Project (whether incurred during the construction of the Restaurant/Retail Project or, after the issuance of the Certificate by the City, on construction costs relating to substantial alterations) and (ii) a twelve percent (12%) per annum cumulative cash return on the net investment from time to time of the owners of Subtenant. For the purposes hereof, "Net Operating Cash Flow" shall mean (i) all cash received from operations of Subtenant at the Restaurant/Retail Project in the ordinary course of business (excluding capital contributions and Net Proceeds of Capital Transactions), less (ii) cash expended or properly reserved to pay all ordinary and necessary operating expenses and for other reasonable requirements of the business of Subtenant; and

99108848



# UNOFFICIAL COPY

[(b) an amount equal to 50% of "Net Proceeds." For the purposes hereof, "Net Proceeds" shall mean all proceeds of "Capital Transactions" less all expenses and costs incurred in connection therewith and attributable thereto and less the payment of any and all remaining investment by the owners of Subtenant with respect to the Restaurant/Retail Project, including any unpaid amount of twelve percent (12%) per annum cumulative cash return on such investment outstanding from time to time, all determined in accordance with generally accepted accounting principles. Further, for the purposes hereof, "Capital Transactions" shall mean the sale, exchange, refinancing or other disposition of a portion or all of the assets of Subtenant, other than in the ordinary course of business, whether voluntary or involuntary, including condemnation, foreclosure, destruction or other involuntary taking.]

The component of Percentage Rent referred to in Subsection (a) above shall be payable within \_\_\_ days after the end of the fiscal year of Subtenant and shall be accompanied by appropriate financial statements calculating Net Operating Cash Flow and the adjustments thereto required as herein stated in support of the payments due the City. The component Percentage Rent referred to in Subsection (b) above shall be payable to the City within \_\_\_

# UNOFFICIAL COPY

days of concluding any Capital Transaction that results in Net Proceeds for which a Percentage Rent payment is due hereunder and such payment shall be accompanied by appropriate supporting documents and calculations of the Percentage Rent due.

The Sublease shall also include such other provisions as shall be approved by the Commissioner including, but not limited to, the requirement that the use and design parameters of the Restaurant/Retail Parcel conform to the requirements of subsection 4.2(b) of the Agreement. In the event that Goodman fails to enter into a Sublease acceptable to the Commissioner within six (6) months following execution of the Agreement, all rights of Goodman to enter into the Restaurant/Retail Ground Lease shall terminate.

The Restaurant/Retail Ground Lease, if any, shall be subject to the provisions of the Agreement including, but not limited to, the matters set forth in subsections 3.2 (a) (1) through (5) above. In addition, the Restaurant/Retail Parcel shall be leased to Goodman 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, or to the physical condition of any improvements located thereon; subject, however, to the right of Goodman to terminate the Restaurant/Retail Ground Lease, and all obligations of the parties with respect to the Restaurant/Retail Parcel, in the event that the cost of the site preparation work

99108848

# UNOFFICIAL COPY

attributable to the Restaurant/Retail Parcel exceeds the sum of \$300,000 as more fully described in subsection 4.1 of the Agreement.

(d) Qualified Option to Purchase the Restaurant/Retail Parcel. The Restaurant/Retail Ground Lease shall provide, and the Sublease in turn may provide, that at any time subsequent to the issuance of the Certificate regarding the Restaurant/Retail Parcel until the expiration of the Term or the termination of the Sublease, Goodman or the Restaurant/Retail Developer, as the case may be, and its successors and assigns under the Restaurant/Retail Ground Lease or the Sublease, as the case may be, shall have a qualified option to purchase fee simple title of the Restaurant/Retail Parcel. The parties agree that the purchase price ("Purchase Price") for the Restaurant/Retail Parcel shall be Two Million Two Hundred Thousand Dollars (\$2,200,000) during the period of eight (8) years commencing with the Commencement Date, and thereafter until the expiration of the Sublease, the Purchase Price shall be determined by the appraised market value of the Restaurant/Retail Parcel for the permitted uses as set forth in subsection 4.3(b) below and as determined by the procedures set forth herein. The parties acknowledge, however, that the proposed sale of the Restaurant/Retail Parcel as described herein must be advertised by the City for solicitation of alternative proposals

99108848

# UNOFFICIAL COPY

as provided for in the TIF Act, and furthermore, such sale is subject to authorization (and approval of the Purchase Price) by the City Council and any other required action such as that by the Community Development Commission or its successor agency or commission. The determination of the fair market value of the Restaurant/Retail Parcel shall be made by one appraiser to be selected by the City and one appraiser to be selected by Goodman. If the fair market value of each appraisal is within five percent (5%) of the other, then the fair market value shall be determined by an average of the two proposed values. If the difference between the two exceeds five percent (5%), then a third appraiser to be selected by the City's Purchasing Agent shall determine which of the two appraisals more accurately approximates the fair market value of the Restaurant/Retail Parcel. The determination by such an appraiser shall be conclusive as to both parties provided, however, that in no event shall the Purchase Price for the Restaurant/Retail Parcel be less than Two Million Two Hundred Thousand Dollars (\$2,200,000). The Restaurant/Retail Developer shall be entitled to a credit to be applied to the Purchase Price in the sum of the Percentage Rent paid to the City pursuant to subsection 3.2(c) and the Restaurant/Retail Ground Lease to the extent such credit is less than the Purchase Price. Any assignment of this qualified option to purchase the

99108848

# UNOFFICIAL COPY

Restaurant/Retail Parcel contemplated in and/or granted by the Agreement, the Restaurant/Retail Ground Lease or the Sublease shall be subject to approval of the Commissioner and shall in all events only be made in connection with, and not independent of, the assignment of the Restaurant/Retail Ground Lease or the Sublease, as the case may be.

### 3.3 Possession of the Property.

(a) The Theater Parcel. Subject to all the terms, covenants and conditions of the Agreement, Goodman shall be entitled to possession of the Theater Parcel pursuant to the Theater Ground Lease and the conveyance of the Harris and Selwyn Theaters as provided for in subsection 3.2(b) above, upon the occurrence of all of the following:

- (i) approval by the DPD and the Landmarks Commission of the Theater Design Plans (as defined in subsection 4.6 below); and
- (ii) approval by the DPD of a revised Schedule for the Theater Project, as more fully described in subsection 4.8(c) below; and
- (iii) approval by the DPD of Goodman's Budget as defined in subsection 4.8(a) below and Goodman's financing as described in subsection 4.8(a) below; and

99108848

# UNOFFICIAL COPY

- (iv) approval by the DPD of the Loan Agreement, as more fully described in subsection 4.8(a) below; and
- (v) passage by the City Council of the City of the amendment to the Planned Development Ordinance, as described in subsection 4.4 below; and
- (vi) the obtaining by Goodman of insurance policies insuring the Theater Parcel (and specifically, the Harris and Selwyn Theaters) as more fully described in subsection 4.14 below; and
- (vii) the approval by the DPD of a public information program and commemorative plaque regarding the historical background of the Harris and Selwyn Theaters, and the role of Linpro Chicago Land Limited Partnership, which donated the Harris and Selwyn Theaters to the City, and the City of Chicago, which is providing funding for the renovation and remodeling of said Theaters, in order to preserve the Harris and Selwyn Theaters as an integral part of the "Theater District" of the City's Central Loop Project Area.

If the conditions described in this subsection 3.3(a) are not achieved by Goodman within six (6) months of the execution of the Agreement, except for the action or inaction of the City, then the

# UNOFFICIAL COPY

Agreement, or any undertaking by the City under the agreement to enter into the Theater Ground Lease or the Restaurant/Retail Ground Lease, at the option of the City, shall become null and void, and the City shall be under no further obligation to Goodman with respect to the Property.

(b) The Restaurant/Retail Parcel. The Restaurant/Retail Ground Lease, if any, shall be entered into between the City and Goodman, and the Restaurant/Retail Developer will be entitled to possession of the Restaurant/Retail Parcel pursuant to the Sublease, upon the earlier to occur of the City's determination that it is in the best interest of the [Theater] Project, and completion of all of the following:

(i) approval by the DPD of the construction loan agreement for the Restaurant/Retail Project as more fully described in subsection 4.8(b) below; and

(ii) passage by the City Council of the City of the amendment to the Planned Development Ordinance, as described in subsection 4.4 below; and

(iii) the obtaining by Goodman or the Restaurant/Retail Developer of insurance policies insuring the Restaurant/Retail Parcel, as more fully described in subsection 4.14 below; and

# UNOFFICIAL COPY

(iv) the execution of the Sublease affecting the Restaurant/Retail Parcel, the form of which Sublease has been approved by the DPD pursuant to subsection 3.2(c) above.

If the conditions described in this subsection 3.3(b) are not achieved by Goodman within six (6) months of the execution date of the Agreement, except for the action or inaction of the City, then the Agreement, and any undertaking by the City under the Agreement to enter into the Restaurant/Retail Ground Lease and to permit the Sublease, subject to its approval, at the option of the City, shall become null and void, and the City shall be under no further obligation to Goodman, with respect to the Restaurant/Retail Parcel.

**3.4 Closing Documents.** Prior to, or in connection with, the execution and delivery of the Theater Ground Lease and the quitclaim deed for the Harris and Selwyn Theaters, or the Restaurant/Retail Ground Lease, as the case may be, the parties shall deliver to each other the following:

(i) Goodman's documents:

(a) A certificate of good standing as an Illinois not for profit corporation and a certificate of incumbency for Goodman.

99108848



# UNOFFICIAL COPY

(b) A corporate resolution from Goodman authorizing the execution of the Theater Ground Lease or the Restaurant/Retail Ground Lease (and the Sublease), as the case may be.

(c) An ALTA statement.

(ii) The City's documents:

(a) The Theater Ground Lease or the Restaurant/Retail Ground Lease, as the case may be.

(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) The quitclaim deed to the Harris and Selwyn Theaters.

**3.5 Real Estate Taxes.** The City shall take all appropriate steps to secure the waiver of general real estate taxes to the date of delivery of the applicable Ground Lease and conveyance of the Harris and Selwyn Theaters to Goodman. Goodman shall be responsible for leasehold real estate taxes, if any, accruing after the execution of the applicable Ground Lease pursuant to the

99108848

# UNOFFICIAL COPY

terms and conditions described in the Theater Ground Lease and the Restaurant/Retail Ground Lease, as the case may be.

3.6 Recordation of Ground Leases. Goodman may file the Ground Leases for recordation with the Recorder's Office. At the request of Goodman, the City and Goodman will enter into a short form memorandum for each of the Ground Leases for recordation purposes. Goodman shall pay all such recording costs.

## SECTION IV

### THE CONSTRUCTION OF THE PROJECT

#### 4.1 Demolition of the Garrick Garage; Site Preparation Work.

In preparation for the redevelopment of the Garrick Parcel pursuant to the terms of the Agreement, the City shall hire a demolition contractor to undertake asbestos remediation and the demolition of the Garrick Garage down to grade level only. The remediation and demolition work shall not commence until the Goodman has demonstrated to the City its compliance with the conditions described in subsection 3.3(a)(i)-(iv) above unless the City in its sole discretion determines that the demolition work shall commence at an earlier date.

After the demolition of the Garrick Garage is completed to grade level, Goodman shall undertake site preparation work

99108848

# UNOFFICIAL COPY

affecting the Woods Parcel and the Garrick Parcel, including sub-surface environmental remediation, removal of underground foundations, and utility connections necessary to construct the Project. The City shall reimburse Goodman for such work in an amount not to exceed \$300,000 as relates to the Restaurant/Retail Parcel. In the event that the cost of such work which is solely attributable to the Restaurant/Retail Parcel exceeds the sum of \$300,000, Goodman and/or the Restaurant/Retail Developer may fund the excess cost and continue to perform under the terms of the Agreement and the Restaurant/Retail Ground Lease, or in the alternative, Goodman may terminate the Restaurant/Retail Ground Lease. In such event, Goodman's right to sublease the Restaurant/Retail Parcel shall also terminate along with all other obligations between the parties with respect to the Restaurant/Retail Parcel.

#### 4.2 Scope of the Project.

(a) The Theater Project. The Theater Project that will be constructed by Goodman on the Theater Parcel shall become the headquarters for The Goodman Theatre and shall consist of the following: (a) an approximately 800 seat main theater, (b) an approximately 400 seat studio theater, (c) rehearsal and costume

99108848

# UNOFFICIAL COPY

storage rooms, (d) administrative offices, (e) a costume shop, (f) Goodman's box office, and (g) other support facilities appropriate and consistent with theatrical, cultural and entertainment uses.

The construction of the Theater Project by Goodman shall include the renovation or rehabilitation of the facades of the Harris and Selwyn Theaters to preserve their historic and architecturally significant features in accordance with their status as a designated City landmark and the Theater Landmarks Ordinance, and in accordance with the design parameters described in Exhibit L and subsection 4.3(a) below and the Working Drawings and Specifications approved by the DPD and the Landmarks Commission in accordance with the procedures described in subsection 4.6 below.

The use of the Theater Project shall be limited to theatrical, cultural and entertainment activities and shall be operated by Goodman in accordance with the standards of a first-class live theatrical organization. This restriction on use provision shall also be contained in the Theater Ground Lease and the quitclaim deed from the City conveying the Harris and Selwyn Theaters in connection with entering into, and subject to the terms and provisions, of the Theater Ground Lease.

99108848

# UNOFFICIAL COPY

(b) The Restaurant/Retail Project. The Restaurant/Retail Project that will be constructed on the Restaurant/Retail Parcel by the Restaurant/Retail Developer will be utilized to provide first class restaurant and retail operations, compatible with the theatrical, cultural and entertainment activities of the Theater Project. The Restaurant/Retail Project shall also include limited office space used by arts-related entities or administrative offices for Goodman, the Restaurant/Retail Developer, or tenants occupying space at the Restaurant/Retail Parcel. This restriction on use shall also be contained in the Restaurant/Retail Ground Lease and the Sublease of the Restaurant/Retail Parcel entered by the Goodman with the Restaurant/Retail Developer for development and construction of the Restaurant/Retail Project. All improvements to be constructed on the Restaurant/Retail Parcel will be consistent with the development parameters described in subsection 4.3(b) below and the Working Drawings and Specifications to be approved by the DPD in accordance with the procedures described in subsection 4.6 below.

#### 4.3 Development Parameters.

(a) The Theater Project. The Theater Project shall be subject to the following development parameters:

# UNOFFICIAL COPY

- (i) The height of the Theater Project, including any future expansion by Goodman, shall be limited to a height of approximately 124 feet above grade and a maximum of ten (10) stories.
- (ii) The facades of the Harris and Selwyn Theaters shall be preserved in accordance with the terms of the Agreement, including, without limitation, Exhibit L attached hereto and subsection 4.2(a) above. The design of the overall Theater Project shall be complementary with the restoration, rehabilitation and preservation of the historic facades of the Harris and Selwyn Theaters (and shall be approved by the DPD).
- (iii) The facade of the Theater Project along the Dearborn Street right-of-way shall be active and pedestrian-oriented in character to the extent agreed upon by the parties. The Lake Street facade shall be conventional theater sidewalls with exit doors, complementary with the overall character of the Theater Project. In addition, the facade of the Theater Project along the Dearborn Street right-of-way shall recognize the

Property of Cook County Clerk's Office  
99108848

# UNOFFICIAL COPY

Couch Place axis to the east of the Theater Project with an appropriate design.

- (iv) No major setbacks shall be allowed along the Dearborn Street or Lake Street rights-of-way. Goodman, however, shall maintain a thirty (30) foot setback at a level of fifty (50) feet above grade for that portion of the western boundary of the Theater Project located south of Couch Place.
- (v) The exterior signage utilized by Goodman located at the Theater Project must meet the prior written approval of the DPD.
- (vi) Loading access to the Theater Project shall occur solely from the Lake Street right-of-way.
- (vii) The streetscaping, including any paving of sidewalks, landscaping and lighting, provided by Goodman as part of the Theater Project shall meet the prior written approval of the DPD and be attractive and compatible with the streetscaping of Block 35.
- (viii) The design of the rooftop mechanicals, as well as the concepts described in paragraphs (iii-vii) above shall be more specifically addressed in the

99108848

# UNOFFICIAL COPY

amendment to the Planned Development Ordinance described in subsection 4.4 below.

(b) The Restaurant/Retail Project. The Restaurant/Retail Project shall be subject to the following development parameters:

- (i) The Restaurant/Retail Project shall consist of a five-story building and basement which will be used as a first class restaurant and retail facility compatible with the Theater Project, subject to the restrictions described in the Agreement, Restaurant/Retail Ground Lease and Sublease. The Restaurant/Retail Project shall also include limited office space uses by arts-related entities or administrative offices for Goodman, the Restaurant/Retail Developer, or tenants occupying space at the Restaurant/Retail Parcel. Prior to June 20, 2007, the height and use of the Restaurant/Retail Parcel as aforesaid shall not be changed unless approved by the Commissioner. After June 20, 2007, any change in height and use shall be in compliance with applicable zoning and other laws and covenants and also subject to approval by the Commissioner

99108848



# UNOFFICIAL COPY

unless Goodman or the Restaurant/Retail Developer or any successor in interest as permitted by the Restaurant/Retail Ground Lease has purchased the Restaurant/Retail Parcel.

- (ii) Loading access for the Restaurant/Retail Project shall not be permitted along Dearborn or Randolph Streets, but must occur solely below grade via the underground tunnel serving the western portion of Block 35.
- (iii) The design and location of any roof-top mechanicals or other structures on the roof of the Restaurant/Retail Project shall require the prior approval of the DPD.
- (iv) No setbacks for the Restaurant/Retail Project shall be permitted along Dearborn Street or Randolph Street.
- (v) Exterior signage and streetscaping shall be subject to the prior approval of the DPD.
- (vi) The Randolph Street facade shall be complementary to the Dearborn Street facade of the Theater Project.

99108848

# UNOFFICIAL COPY

(vii) No major setbacks shall be allowed along the Dearborn or Randolph Street right-of-way. The Restaurant/Retail Developer, however, shall maintain a thirty (30) foot setback at a level of fifty (50) feet above ground.

(viii) The concepts described in paragraphs (iii)-(vii) above shall be more specifically addressed in the amendment to the Planned Development ordinance described in subsection 4.4 below.

The City shall use its best efforts (at no cost to the City) to assist the Restaurant/Retail Developer in obtaining an appropriate access easement to, from and through the basement of the existing Chicago Title and Trust Building located adjacent to the western boundary of the Restaurant/Retail Project for deliveries and trash removal and the right to use the trash storage facilities for a reasonable fee (to be solely paid by the Restaurant/Retail Developer). In the event that the Restaurant/Retail Developer is unable to obtain such an easement, Goodman shall have the right to terminate the Restaurant/Retail Ground Lease without further obligation between the parties.

**4.4 Planned Development.** Within sixty (60) days following approval of the ordinance authorizing the execution of the

# UNOFFICIAL COPY

Agreement by the City, Goodman shall file an application with the Chicago Plan Commission for an ordinance to amend Planned Development Ordinance #454 to provide for the construction of the Theater Project and the Restaurant/Retail Project, in accordance with the procedures described in the Chicago Zoning Ordinance, Chapter 194A, Municipal Code of Chicago. The Commissioner shall take all appropriate steps consistent with the Zoning Ordinance to recommend that the Planned Development amendment affecting the Property be approved by the Chicago Plan Commission and adopted by the City Council of the City; provided, however, that nothing contained herein shall require the City to approve the amendment to the Planned Development Ordinance.

**4.5 Right of Entry.** Upon execution of the Agreement by the parties, the City shall grant to Goodman a right of entry to the Property (excluding the Garrick Parcel) for the purpose of allowing Goodman's Development Manager, architects and engineers to inspect the Property (excluding the Garrick Parcel) and to investigate the soil and the environmental condition existing in the Property (excluding the Garrick Parcel) as well as the improvements thereon. Goodman shall be granted a right of entry to the Garrick Parcel upon expiration of the applicable thirty (30) day notice period which the City is required to provide to

99108848

# UNOFFICIAL COPY

the former owner and current operator of the Garrick Garage and surrender of possession thereof to the City. Goodman shall prepare its construction documents (as described in subsection 4.6 below) as well as the Budget described in subsection 4.8(a) below taking into consideration the results of such inspections.

**4.6 Submission of Construction Documents; Site Preparation Work.**

(a) Design Plans. The DPD has approved the schematic drawings for the Theater Project and the Restaurant/Retail Project. A list of the schematics is attached hereto as Exhibit D. Within sixty (60) days following the execution of the Agreement by the parties, Goodman shall prepare and submit to the Landmarks Commission and the DPD for their respective approval proposed design plans for the Theater Project based upon and consistent with the approved Schematics. The design plans shall also conform to the terms of the Agreement (including the landmark requirements listed on Exhibit L), the Redevelopment Documents as amended from time to time, the Theater Landmarks Ordinance (when applicable), and all applicable federal, state and local laws, ordinances and regulations.

99108848

# UNOFFICIAL COPY

The DPD and the Landmarks Commission shall have fifteen (15) days in which to approve or reject the design plans for the Theater Project. If the Landmarks Commission or the DPD, or both, reject the design plans, the Landmarks Commission or the DPD, as the case may be, shall deliver written notice of such to Goodman. Goodman shall thereafter have fifteen (15) days in order to revise the design plans consistent with the requirements of the Landmarks Commission or the DPD, as the case may be, and resubmit them to the Landmarks Commission and the DPD for approval. The DPD and the Landmarks Commission shall thereafter have ten (10) days after receipt from which to approve or reject the resubmitted documents.

Within sixty (60) days following the execution of the Sublease affecting the Restaurant/Retail Parcel, Goodman, the Restaurant/ Retail Developer, or both, shall submit to the DPD for its approval proposed design plans regarding the Restaurant/Retail Project, which are based on the approved Schematics. The DPD shall have fifteen (15) days in which to approve or reject the design plans. If the DPD rejects the design plans, the DPD shall deliver written notice to Goodman or the Restaurant/Retail Developer, as the case may be, and Goodman, the Restaurant/Retail Developer, or both, shall thereafter have fifteen (15) days in

99108848

# UNOFFICIAL COPY

order to revise the design plans consistent with the requirements of the DPD, and resubmit them to the DPD for its approval. The DPD shall thereafter have ten (10) days after receipt of which to approve or reject the resubmitted documents.

The final design development drawings and specifications which have been approved by the Landmarks Commission and/or the DPD, as applicable, shall be considered the "Theater Design Plans" or the "Restaurant/Retail Design Plans", as applicable, and shall be collectively referred to as the "Design Plans" for purposes of the Agreement.

Any material change to the Design Plans must be submitted to the Landmarks Commission and/or the DPD, as applicable, for approval, which approval shall not be unreasonably withheld or delayed.

(b) Development of Working Drawings and Specifications.

Within one hundred eighty (180) days following the receipt of approval by the DPD and the Landmarks Commission of the Theater Design Plans, Goodman shall submit to the DPD and the Landmarks Commission for its respective approval the proposed final construction documents regarding the construction of the Theater Project. The DPD and the Landmarks Commission shall have fifteen (15) days in which to approve or reject the construction

# UNOFFICIAL COPY

documents. If the Landmarks Commission or the DPD, as the case may be, rejects such documents, written notice of such shall be delivered to Goodman. Goodman shall thereafter have fifteen (15) days in order to revise the construction documents consistent with the requirements of the Landmarks Commission or the DPD, as the case may be, and resubmit them to the Landmarks Commission and the DPD for approval. The DPD and the Landmarks Commission shall thereafter have ten (10) days after receipt from which to approve or reject the resubmitted documents.

Within one hundred eighty (180) days following the approval of the Restaurant/Retail Design Plans affecting the Restaurant/Retail Parcel, Goodman shall submit or cause to be submitted to the DPD proposed construction documents regarding the Restaurant/Retail Project. The DPD shall have fifteen (15) days in which to approve or reject the construction documents. If the DPD rejects the construction documents, the DPD shall deliver written notice of such to Goodman. Goodman shall thereafter have fifteen (15) days in order to revise the construction documents consistent with the requirements of the DPD and resubmit them to the DPD for its approval. The DPD shall thereafter have ten (10) days after receipt of which to approve or reject the resubmitted documents. The final construction documents which have been

99108848

# UNOFFICIAL COPY

approved by the Landmarks Commission and/or the DPD, as applicable, shall be considered the "Theater Working Drawings and Specifications" or the "Restaurant/Retail Working Drawings and Specifications", as applicable (collectively, the "Working Drawings and Specifications" for purposes of the Agreement).

Any material change to the Working Drawings and Specifications must be submitted to the Landmarks Commission and/or the DPD, as applicable, for approval, which approval shall not be unreasonably withheld or delayed.

**4.7 Limited Applicability of DPD's Approval.** Any approvals of the Schematics, Design Plans and Working Drawings and Specifications made by the DPD or the Landmarks Commission 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 DPD or the Landmarks Commission pursuant to the Agreement constitute approval of the quality, structural soundness or the safety of the improvements constituting the Theater Project or the Restaurant/Retail Project, as the case may be. The City, however, agrees to assist Goodman in expeditiously obtaining approvals for building permits affecting the Theater Project and the Restaurant/Retail Project. Goodman agrees to notify the DPD within



# UNOFFICIAL COPY

five (5) days of the issuance of the foundation and base building permits affecting each of the Theater Project or Restaurant/Retail Project, as the case may be, by the City's Department of Buildings.

## 4.8 Financing the Project.

### (a) Budget and Financing the Theater Project.

(1) Goodman's Financial Contribution. The preliminary budget for the Theater Project has been approved by the DPD and is attached hereto as Exhibit F. Upon completion of the Theater Design Plans, Goodman will submit to the DPD its revised estimated cost ("Budget") of completing the Theater Project. The Budget will thereafter be revised and submitted to the DPD by Goodman for approval on a quarterly basis to reflect actual costs incurred and anticipated costs to be incurred in completing the Theater Project. The Budget shall also contain a description disclosing in sufficient detail the sources of funds that Goodman shall contribute to pay such costs ("Goodman's Financial Contribution"), including any equity and contributions from fundraising efforts ("Equity").

99108848

# UNOFFICIAL COPY

With regard to accumulating the Goodman's Financial Contribution, Goodman shall be permitted to obtain a loan or loans (whether a bridge loan or a more permanent loan from the proceeds of a tax-exempt bond issuance) ("Lender Financing") from a reputable financial institution or other lender which is in good standing with the State of Illinois, and satisfactory to the DPD in its sole discretion, including the Illinois Development Finance Authority in connection with the issuance of tax-exempt bonds ("Lender"). In connection with any Lender Financing, Goodman shall deliver to the DPD evidence of a commitment or commitments for adequate financing (a "Commitment"), specifying the amount of the Lender Financing, length of the term and the applicable interest rate and may relate, in part, to the provision of a credit facility in support of any such bond issuance. The terms of the Commitment shall be subject to the approval of the DPD for the purpose of confirming that it is consistent with the requirements of the Agreement. Once the Commitment has been approved by the DPD and executed by the parties, the DPD shall also review and approve the terms of any loan agreement regarding the Lender Financing ("Loan Agreement") to be executed by Goodman and the Lender, such review by the DPD to be limited to a determination of the consistency of the Loan Agreement with the

# UNOFFICIAL COPY

terms of the Agreement. The existence of an approved, executed Loan Agreement with respect to Lender Financing, which will make Lender Financing available for disbursement conditioned only on normal and customary requirements for disbursement of funds from time to time, shall be a requirement to any obligation of the City to disburse any of the City's Financial Contribution.

The Lender shall be permitted to secure its Lender Financing by a leasehold mortgage ("First Leasehold Mortgage") encumbering the Theater Parcel and evidenced by that certain leasehold mortgage note ("First Leasehold Mortgage Note"). The First Leasehold Mortgage shall be subordinate to the terms and conditions of the Agreement and the Theater Ground Lease. The City shall agree to certain reasonable protections to the Lender with respect to its First Leasehold Mortgage position under and pursuant to the terms of the Theater Ground Lease, as more fully described in subsection 5.3(d) below. Goodman shall not be obligated to return any of the City's Financial Contribution which will be provided pursuant to subsection 4.8(a)(2) below so long as the Lender, at the time of default by Goodman, agrees to perform or cause to be performed the covenants of Goodman under the Agreement and the Theater Ground Lease, subject, however, to the provisions described in subsections 4.16 and 5.3 below.

# UNOFFICIAL COPY

Goodman's Financial Contribution shall be deposited by Goodman with the Escrowee from time to time as needed. Notwithstanding the provisions contained in this paragraph or elsewhere in the Agreement, it shall be the obligation of Goodman to fund any excess Project costs beyond the City's Financial Contribution, and Goodman shall hold the City harmless with respect thereto.

(2) City's Financial Contribution. The City shall make a financial contribution for TIF Funded Improvements to assist Goodman with the completion of the Theater Project and certain site preparation costs affecting the Woods and Garrick Parcels in the aggregate amount of up to Eighteen Million Eight Hundred Thousand Dollars (\$18,800,000.00) (the "City's Financial Contribution"). The parties agree that the City's Financial Contribution shall in no manner exceed the aggregate amount described in this paragraph. The parties further acknowledge that the City's Financial Contribution for TIF Funded Improvements has been derived from the Incremental Taxes allocated to the City or proceeds from the sale of the Bonds, and that any proposed use of the City's Financial Contribution must be expended for eligible Redevelopment Project Costs in accordance with the laws,

99108848

# UNOFFICIAL COPY

regulations and ordinances governing the use of such funds, including, without limitation, the TIF Act.

The City's Financial Contribution for TIF Funded Improvements shall be allocated in the following manner:

- (a) The sum not to exceed Three Hundred Thousand Dollars (\$300,000) in the aggregate shall be utilized to reimburse Goodman for site preparation work concerning the Woods and Garrick Parcels, including environmental remediation, the removal of underground foundations and, if required by law, the removal of the underground storage tanks located on the Woods Parcel, utility connections and for such other site preparation work as is necessary. If the cost of environmental remediation and site preparation work affecting the Woods and Garrick Parcels solely affecting the Restaurant/Retail Parcel exceeds \$300,000, the Restaurant/Retail Developer, if unwilling to fund such excess cost, shall have the right to terminate the Sublease with respect to the Restaurant/Retail Parcel. In such event, Goodman's right to lease the Restaurant/Retail Parcel shall also terminate, and the parties shall execute an appropriate instrument in recordable form evidencing such

99108848

# UNOFFICIAL COPY

termination provided, however, that such termination shall not release Goodman from its obligation to redevelop the Theater Project.

- (b) The sum not to exceed Eighteen Million Five Hundred Thousand Dollars (\$18,500,000.00), which shall be utilized to pay for or reimburse Goodman for those costs associated with the rehabilitation, restoration and preservation of the historic facades of the Harris and Selwyn Theaters by Goodman and Redevelopment Project Costs associated with the rehabilitation, remodeling, repair, renovation and reconstruction of the Harris and Selwyn Theaters (other than the facades) and with the Theater Project, in general by Goodman, all as more particularly set forth in the portion of the Budget related to TIF-Funded Improvements and attached hereto as Exhibit F, as the same may be updated from time to time.

Notwithstanding the means and methods used by Goodman to project the cost of the TIF Funded Improvements in the Budget, e.g. based on relative square footage, Goodman expressly acknowledges and agrees that methods and procedures must be followed by the Development Manager, the Pre-Construction

# UNOFFICIAL COPY

Consultant, the General Contractor, all Subcontractors and development professionals that result in appropriate records being kept in support of payment requests, in order to allow for the verification that costs covered by the City's Financial Contribution are for actual Redevelopment Project Costs that are part of TIF Funded Improvements.

The City's Financial Contribution shall be deposited by the City with the Escrowee from time to time as needed. There will initially be deposited with the Escrowee on account of the City's Financial Contribution the sum of Six Million and no/100 Dollars (\$6,000,000.00) being the amount of Incremental Taxes currently held in Escrow under the Original Agreement (the "Currently Escrowed Increments Taxes") [Goodman will deposit and the Escrowee shall fund 100% of the costs allocable to Private Funding as identified in the Budget attached as Exhibit F, as it may be amended from time to time ("Non-TIF Costs"). Provided that the City is satisfied that the progress of Private Funding for Non-TIF Costs is appropriately comparable to the progress of "TIF Funding" (as identified on Exhibit F), the City will deposit and the Escrowee shall fund 100% of the costs allocable to TIF Funding for TIF Funded Improvements as identified in the Budget attached as Exhibit F, as it may be amended from time to time ("TIF Costs")

99108848

# UNOFFICIAL COPY

and the Goodman will deposit and the Escrowee shall fund 100% of the remainder of such TIF Costs. Any sums of the City's Financial Contribution not utilized for the TIF Funded Improvements for the site preparation work described in paragraph (a) herein, the rehabilitation, restoration and preservation of the historic facades of the Harris and Selwyn Theaters, and the rehabilitation, remodeling, repair and reconstruction of the rest of the Harris and Selwyn Theaters, after the completion of said work, shall be returned to or retained by the City.

Notwithstanding anything hereinabove which may appear to be to the contrary, any interest subsidy ("TIF Funded Interest Costs") to be paid or reimbursed by the City as a cost of TIF Funded Improvements in favor of Goodman as contained in the Budget shall be limited as follows:

- (a) Such TIF Funded Interest Costs are to be paid directly from Incremental Taxes in the special tax allocation fund established pursuant to the TIF Act; and
- (b) Such payments of TIF Funded Interest Costs in any one year may not exceed 30% of the annual interest costs incurred by Goodman with regard to the Theater Project for that year; and



# UNOFFICIAL COPY

- (c) If there are not sufficient Incremental Taxes available in the special tax allocation fund to make payment pursuant to this paragraph, then the amounts so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and
- (d) The total of such payments of TIF Funded Interest Costs paid pursuant to the TIF Act shall not exceed 30% of the total (i) costs paid or incurred by Goodman for the Theater Project plus (ii) Redevelopment Project Costs excluding any property assembly costs and any relocation costs incurred by the City pursuant to the TIF Act in connection with the Theater Project.

Accordingly, as required by the TIF Act, no such TIF Funded Interest Costs shall be paid out of the proceeds of the Bonds, which Bonds are to be paid from pledged revenues consisting of Incremental Taxes, but such TIF Funded Interest Costs may be paid from Currently Escrowed Incremental Taxes. It is hereby understood and agreed by Goodman that the City does not make any representations that the amount of Incremental Taxes held from time to time in the aforesaid special tax allocation fund will be sufficient to pay for or reimburse Goodman for any or all of such TIF Funded Interest Costs not paid from Currently Escrowed

# UNOFFICIAL COPY

Incremental Taxes, taking into account debt service payments, reserves and other expenditures to be made with respect to the Bonds from Incremental Taxes before Incremental Taxes are available in the special tax allocation fund.

The City's Financial Contribution is being made conditioned upon the faithful performance by Goodman of the Covenant of Performance substantially in the form attached hereto as Exhibit E ("Covenant of Performance"), and its compliance with the Use and Performance Covenants provided for in subsection VII below and in the Theater Ground Lease, which if breached may result in the obligation of Goodman to repay to the City the City's Financial Contribution. The Covenant of Performance shall be dated as of the date of its delivery to the City in connection with the delivery by Goodman of the Theater Ground Lease.

(b) Budget and Financing the Restaurant/Retail Project.

The preliminary budget for the Restaurant/Retail Project has been approved by the DPD and is attached hereto as part of Exhibit F. Upon completion of the Restaurant/Retail Design Plans, the Restaurant/Retail Developer will submit to the DPD its revised Budget for completing the Restaurant/Retail Project. The Budget will thereafter be revised and submitted to the DPD for approval on a quarterly basis to reflect actual costs incurred and

99108848

# UNOFFICIAL COPY

anticipated costs to be incurred in completing the Restaurant/Retail Project. The Budget shall also contain a description disclosing in sufficient detail the sources of funds that the Restaurant/Retail Developer shall contribute to pay such costs, including any equity.

With regard to accumulating funds to undertake the Restaurant/Retail Project, the Restaurant/Retail Developer shall be permitted to obtain a construction loan ("R/R Lender Financing") from a reputable financial institution or other lender which is in good standing with the State of Illinois, and satisfactory to the DPD in its sole discretion ("R/R Lender"). In connection with any R/R Lender Financing, the Restaurant/Retail Developer shall deliver to the DPD evidence of a commitment for adequate financing ("R/R Commitment"), specifying the amount of the R/R Lender Financing, length of the term and the applicable interest rate. The terms of the R/R Commitment shall be subject to the approval of the DPD for the purpose of confirming that it is consistent with the requirements of the Agreement and the Restaurant/Retail Ground Lease. Once the R/R Commitment has been approved by the DPD and executed by the parties, the DPD shall also review and approve the terms of the loan agreement regarding the R/R Lender Financing ("R/R Loan Agreement") to be executed by

99108848

# UNOFFICIAL COPY

the Restaurant/Retail Developer and the R/R Lender, such review by the DPD to be limited to a determination of the consistency of the R/R Loan Agreement with the terms of the Agreement and the Restaurant/Retail Ground Lease.

The Lender shall be permitted to secure its loan by a leasehold mortgage ("R/R Leasehold Mortgage") encumbering the Restaurant/Retail Parcel and evidenced by that certain leasehold mortgage note ("R/R Leasehold Mortgage Note"). The City shall agree to afford certain reasonable protections to the R/R Lender with respect to its R/R Leasehold Mortgage position under and pursuant to the terms of the Restaurant/Retail Ground Lease, as more fully described in subsection 5.3 below. The R/R Leasehold Mortgage shall be subordinate to the terms and conditions of the Agreement and the Restaurant/Retail Ground Lease, subject, however, to the provisions described in subsections 4.16 and 5.3 below.

(c) Schedule. A preliminary development and construction schedule ("Schedule") describing the timetable for the various activities associated with the completion of the Theater Project and the Restaurant/Retail Project, respectively, has been approved by the DPD and is attached hereto as Exhibit G. The Schedule shall be periodically revised by Goodman and the Restaurant/Retail

# UNOFFICIAL COPY

Developer, as the case may be, in accordance with the terms and provisions of the Agreement.

(d) Development Manager and Hiring of Contractors. The Goodman has employed Mesirov Stein Real Estate, Inc., an Illinois corporation, to serve as Development Manager for the Theater Project and the Restaurant/Retail Project. The Development Manager shall coordinate the various pre-development and construction activities associated with the Theater Project and the Restaurant/Retail Project, including, without limitation, the production of Theater Design Plans and Theater Working Drawings and Specifications, coordination with the Restaurant/Retail Developer concerning production of the Restaurant/Retail Design Plans and Working Drawings and Specifications regarding the Restaurant/Retail Project, assisting with the obtaining of governmental approvals, and the selection of the Pre-Construction Consultant and the General Contractor to undertake the construction of the Theater Project and the Restaurant/Retail Project.

As the Theater Design Plans are being developed by Goodman, Goodman shall hire a Pre-Construction Consultant ("Pre-Construction Consultant") to undertake the pre-construction activities associated with the Theater Project and the

99108848

# UNOFFICIAL COPY

Restaurant/Retail Project. The pre-construction activities include detailed cost estimating regarding the Budget for the Theater Project and the Restaurant/Retail Project, and coordinating the development of Design Plans among the Goodman, its architects, and, when necessary, the architects hired by the Restaurant/Retail Developer. With regard to the selection of the Pre-Construction Consultant by Goodman, Goodman or the Development Manager shall solicit proposals from at least three (3) qualified contractors from a list of contractors previously submitted by Goodman or the Development Manager and approved by the DPD. Goodman shall seek to hire a contractor at the lowest cost practicable in light of the objectives for the construction of the Theater Project as expressed in the Agreement. Prior to final approval of the Working Drawings and Specifications for the Theater Project, Goodman or its Development Manager shall hire a general contractor ("General Contractor") to undertake the construction of the Theater Project.

Upon completion of the approved Working Drawings and Specifications for the Restaurant/Retail Project, the Restaurant/Retail Developer or its Development Manager shall hire a General Contractor to undertake construction of the Restaurant/Retail Project. The General Contractor for each of said Projects may be the same entity as the Pre-Construction

# UNOFFICIAL COPY

Consultant. It is anticipated that Goodman and the Restaurant/Retail Developer shall hire a General Contractor based on an agreed-upon guaranteed maximum price contract.

The construction requirements regarding the Restaurant/Retail Project shall be as set forth in the approved Sublease. Goodman agrees to impose in such Sublease comparable requirements to those contained herein regarding construction related matters contained in the Agreement for the Theater Project.

In the event that the Pre-Construction Consultant is not selected by Goodman as the General Contractor for the Theater Project, Goodman shall solicit bids from at least three (3) qualified contractors from a list of contractors previously submitted by Goodman or the Development Manager and approved by the DPD. Goodman shall seek to hire a General Contractor at the lowest cost practicable in light of the objectives of constructing the Theater Project as expressed in the Agreement. The terms of the construction contract ("Construction Contract") between Goodman and the General Contractor shall be subject to the approval of the DPD.

All solicitations of bids by Goodman or its Development Manager shall require that all contractors (the Pre-Construction Consultant, the General Contractor and any subcontractors

# UNOFFICIAL COPY

("Subcontractors") thereof) comply with: (i) the Equal Employment Opportunity provisions described in subsection 6.1 below; (ii) the Chicago Resident Employment Ordinance provisions described in subsection 6.2 below; (iii) the Veteran Preference Act, 330 ILCS 55/11 et seq. (1993); (iv) the terms and provisions of the Chicago Human Rights Ordinance, Section 2-160-010 et seq., Municipal Code of Chicago; and (v) the Prevailing Wage Act of Illinois, 820 ILCS 130/1 et seq. (1993).

The contract with the Pre-Construction Consultant, the Construction Contract, and every subcontract let by the Pre-Construction Consultant or General Contractor must contain provisions: (i) regarding compliance with the laws and regulations described in this subsection and in the Agreement; (ii) naming the City as a third party beneficiary and an assignee; and (iii) obligating the Contractor, Pre-Construction Consultant, General Contractor or any Subcontractor to furnish such reports and information as requested by the Chicago Commission on Human Relations to determine compliance with the Chicago Human Rights Ordinance.

The work associated with the Construction Contract for the Theater Project shall not commence until appropriate payment and



# UNOFFICIAL COPY

performance bonds obtained in accordance with the requirements of subsection 4.8(e) below.

Except as provided below, any modifications, change orders or amendments to the Pre-Construction Consultant Contract, if applicable, or the Construction Contract shall be described in a written report provided by Goodman to the City on a monthly basis in conjunction with a Request for Advance (subsection 4.8(g)) pursuant to the Escrow. The monthly report shall describe any change to the Budget resulting from such change order, modification or amendment. The scope of review and approval of said modifications, change orders, or amendments by the DPD shall be based solely on how they affect: (i) the amounts available as contingency in the Budget; (ii) any transfers between line items of the Budget; (iii) an analysis of the overall Budget for the Theater Project and the amount of undisbursed financial resources available to complete the Theater Project in accordance with the Agreement; and (iv) a material change in scope from the approved Construction Contract. In the event that the DPD, in its reasonable discretion, believes that the amount of remaining contingency is insufficient, given the uncompleted portion of the Theater Project as to date of the written report, or that the amount of funds available to Goodman to complete the Theater

99108848

# UNOFFICIAL COPY

Project is insufficient, then Goodman, within ten (10) days of following written notice, shall be required by the City to deposit such required sums in Escrow or otherwise to identify to the City other funds to be made available as contingency or otherwise to complete the Theater Project. Notwithstanding the above language, any approved modification, change order or amendment shall not be deemed to imply any obligation on the part of the City to increase the amount of the City's Financial Contribution.

(e) Bonds. The General Contractor shall be required to deliver to the City a payment and performance bond designating the City as a beneficiary in an amount no less than the amount of construction costs for the Theater Project as reflected in the Construction Contract, insuring the undertaking of the construction of the Theater Project and consistent with the provisions of the Agreement. In addition, the General Contractor undertaking the Restaurant/Retail Project shall be required to deliver to the City a payment bond designating the City as a beneficiary in an amount no less than the amount of construction costs for the Restaurant/Retail Project, insuring the payment of the costs of construction of the Restaurant/Retail Project and consistent with the terms of the Agreement. Said bonds shall be issued by a reputable company satisfactory to the DPD in its

# UNOFFICIAL COPY

reasonable discretion having an AA rating or better using American Institute of Architect's Form No. 311 or its equivalent.

(f) Purchase of Materials. All materials utilized with regard to the construction and completion of the Theater Project, whether purchased directly by Goodman, or by the General Contractor or any Subcontractor, shall be new, high quality materials acquired at the lowest practicable cost. Goodman intends to use or re-use, when practicable, certain materials or historic fabric found at the Property.

(g) Construction Escrow. The Goodman's Financial Contribution and the City's Financial Contribution shall be deposited in and disbursed through an escrow account ("Escrow") held by Chicago Title and Trust Company or such other institutional escrowee ("Escrowee") mutually acceptable to the parties, under the terms and conditions of a customary joint escrow agreement ("Escrow Agreement"). 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 as between them if any conflict exists between the terms of the Agreement and any escrow

99108848

# UNOFFICIAL COPY

instructions or other documents affecting the Escrow, the terms and provisions of the Agreement shall govern.

1. Permitted Disbursements. At the request of and on behalf of Goodman, the Escrowee, pursuant to the terms of the Agreement, shall through disbursements from the Escrow pay directly to the contractor or vendor of Goodman or any payee designated by Goodman including Goodman (except to Goodman itself with respect to its development fee that is not part of the Budget because no such development fee is allowed to be paid to Goodman or any of its Affiliates from the City's Financial Contribution or the Goodman's Financial Contribution), including, the Pre-Construction Consultant, the Development Manager, and the General Contractor, as the case may be, for eligible Project costs as further described in the Budget. The City's Financial Contribution, however, shall be solely utilized to pay for TIF Funded Improvements (all of which costs shall be Redevelopment Project Costs) as are more fully described in Exhibit H attached hereto. The City's Financial Contribution and Goodman's Financial Contribution shall be deposited with the Escrowee from time to time to fund permitted disbursements pursuant to the Agreement as more fully described in subsection 4.8(a).

99108848

# UNOFFICIAL COPY

2. Conditions Precedent to Disbursement. Prior to the initial disbursement of funds from the Escrow by the Escrowee (unless a later time is hereinafter contemplated or permitted); Goodman shall deliver to the DPD and the Escrowee the following documents:

- (a) a certificate of good standing from the State of Illinois for Goodman along with a corporate resolution of Goodman authorizing the execution of the Agreement and the performance of Goodman's obligations under the Agreement, with an accompanying certificate of incumbency from Goodman;
- (b) a title commitment or policy covering the Theater Parcel showing: (i) the Agreement and the Theater Ground Lease (or appropriate memorandum thereof) as having been recorded against the Theater Parcel; (ii) the First Leasehold Mortgage as constituting a lien on Goodman's leasehold interest under the Theater Ground Lease and or the improvements on the Theater Parcel, subordinate to the Agreement and the Theater Ground Lease; and (iii) those permitted exceptions otherwise approved by the DPD;

99108848

# UNOFFICIAL COPY

- (c) a title commitment or policy covering the Restaurant/Retail Parcel showing: (i) the Agreement, Restaurant/Retail Ground Lease (or appropriate memorandum thereof) and the Sublease (or appropriate memorandum thereof) as having been recorded against the Restaurant/Retail Parcel; (ii) the R/R Leasehold Mortgage as constituting a lien on the Ground Lease and on the improvements on the Restaurant/Retail Ground Lease and on the improvements on the Restaurant/Retail Parcel, subordinate to the Agreement and the Restaurant/Retail Ground Lease; and (iii) those permitted exceptions otherwise approved by the DPD.
- (d) a Class A plat of survey (in the most recently revised form of ALTA/ACSM land title survey) of the Property dated within thirty (30) days prior to the commencement of construction of the foundations for the Theater Project and the Restaurant/Retail Project or such earlier date as might be acceptable to the Title Company, prepared and certified by a surveyor licensed in the State of Illinois showing all easements and any encroachments, containing a legal description of the Property, and separate legal description for and

99108848

# UNOFFICIAL COPY

- depictions of the Theater Parcel and Restaurant/Retail Parcel, and flood plain information, and certified to the City and the Title Company;
- (e) copies of the Pre-Construction Consultant Contract and the Construction Contract, if then available and thereafter when obtained, certified by Goodman as being a true and complete copy;
  - (f) a true copy of the foundation permit and base building permit when issued by the City;
  - (g) Internal Revenue Service taxpayer identification numbers of Goodman;
  - (h) copies of the executed First Leasehold Mortgage and R/R Leasehold Mortgage when entered into;
  - (i) payment and performance bonds as required by the provisions of subsection 4.8(e) above;
  - (j) certificates of insurance as required by the City pursuant to subsection 4.14 below;
  - (k) an opinion of counsel substantially in the form attached hereto as Exhibit I, with such changes as may be required by or acceptable to the Corporation Counsel of the City;

99108848

# UNOFFICIAL COPY

(l) current searches under Goodman's name and, when appropriate, the Restaurant/Retail Developer's name as follows:

Secretary of State	UCC Search
Secretary of State	Federal Tax Search
Cook County Recorder	UCC Search
Cook County Recorder	Fixtures Search
Cook County Recorder	Federal Tax Search
Cook County Recorder	State Tax Search
Cook County Recorder	Memoranda of Judgments Search

U.S. District Court	Pending suits and judgments
Clerk of Circuit Court (Cook County)	Pending suits and judgments

and such other searches from such other offices as the City may require in its reasonable discretion; and

(m) such other documents as are reasonably required of Goodman to effectuate the transaction.

Goodman shall simultaneously deliver to the Inspector a copy of the Working Drawings and Specifications and the Budget. The Escrowee shall also be provided with a certified copy of the ordinance authorizing the City to enter into this transaction.

3. Disbursements. Disbursements from the Escrow covering the Project costs described in paragraph 1 of subsection 4.8(g) shall be made by the Escrowee, upon receipt of certification for payment by the Goodman's architect which



# UNOFFICIAL COPY

prepared the Theater Working Drawings and Specifications ("Architect") on AIA Form G702 (or variant) and the receipt of the prior approval of the Inspector, the Lender, and the City, in the following manner:

(a) Method. Subject to the provisions of the Agreement, the Escrowee shall disburse directly to Goodman or to the Development Manager, the Pre-Construction Consultant, the General Contractor, as the case may be, or, if so directed, to such Subcontractor, vendor and any other persons as have actually supplied labor, materials or services in connection with the completion of the Theater Project.

(b) Holdback Provision. The City and/or Goodman shall be permitted to hold back for later deposit with Escrowee, or direct the Escrowee to hold back, on each request for advance for payment covering the costs described in paragraph (1) above of subsection 4.8(g) an amount equal to ten percent (10%) of the requested sum until the Architect certifies the completion of fifty percent (50%) of the Theater Project. Thereafter, the amount to be withheld from each payment shall be reduced to five percent (5%) until the Architect certifies substantial completion of the Theater Project on AIA Form G704 and the City issues its Certificate with regard to completion of the Project. Goodman's

# UNOFFICIAL COPY

Equity, if any, shall be fully deposited with the Escrowee no later than the execution date of the Escrow Agreement by the parties.

(c) Final Disbursement. Subject to the provisions of the Agreement, and as long as Goodman 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 Theater Ground Lease, the First Leasehold Mortgage, the Restaurant/Retail Ground Lease and the Covenant of Performance, the final disbursement of funds constituting the holdback portion referred to above shall be made through the deposit of funds previously deposited in the Escrow and disbursed by the Escrowee when Goodman has completed the Theater Project to the satisfaction of the Architect as evidenced by the issuance of a Final Certificate of Payment on AIA Form G6702, and by the Inspector as evidenced by the issuance of the Inspector's Certificate regarding the substantial completion of the Theater Project, and provided that Goodman has submitted to the Escrowee, the DPD, the Lender and the Inspector affirmative proof that no materialmen's liens or claims or liens exist affecting the Theater Project or the Theater Parcel or could result due to the undertaking of the Theater Project. Any

# UNOFFICIAL COPY

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 ("Request for Advance"), Goodman shall furnish to the Escrowee, the DPD, the Lender and the Inspector, separately with respect to each disbursement request, a Request for Advance duly signed with all blanks appropriately filled in setting forth such details concerning the costs contained therein as said parties shall require, including: (a) a detailed breakdown of percentages and costs of the completion of the various phases of the Theater Project, showing the amounts expended to date for such demolition, renovation, rehabilitation or construction, as the case may be, and the amounts then due and unpaid, an itemized estimate of the amount necessary to complete the work in its entirety and also containing certification by Goodman and the certification for payment by the Architect on AIA Form G702 that the demolition, renovation, rehabilitation or construction work associated with the Theater Project to date of such certificate complies with the Working Drawings and Specifications; (b) if requested by the Escrowee, the Inspector, the City, or the Lender, a list of the names and addresses of all material dealers, laborers and

# UNOFFICIAL COPY

Subcontractors with whom agreements have been made by Goodman, the Development Manager, the Pre-Construction Consultant or the General Contractor, as the case may be; (c) if requested by the Escrowee, the Inspector, the City or the Lender, receipted invoices, and/or releases or waivers of lien on forms approved by the Escrowee and the Inspector from each material dealer, contractor and Subcontractor who has done work or has furnished materials for the Theater Project, including but without limitation, those covered by each such Request for Advance. If work on the Theater Project has begun prior to the initial disbursement, then Goodman shall provide the Escrowee, the City and the Inspector with all such items as aforesaid, and/or acknowledgment of receipt of payment for work or materials previously provided, and any additional items as the Escrowee, the City and the Inspector may reasonably require prior to such initial disbursement.

Also included with a Request for Advance shall be Goodman's written report describing any modifications, change orders or amendments to the Construction Contract or any Subcontract, all as described further in subsection 4.7(d) above.

4. Compliance with Conditions Precedent. Each request for disbursement from the Escrow submitted by Goodman shall be

# UNOFFICIAL COPY

subject to compliance to the satisfaction of the Escrowee, the City, the Lender and the Inspector, in both form and substance, with the applicable conditions precedent for disbursements as set forth in the Agreement.

5. Time for Payment of Requisitions. Upon receipt of a Request for Advance by the Escrowee, the Escrowee shall have five (5) business days in order to effect such Advance.

6. Inspection. During the undertaking of the Theater Project, the City shall employ an inspector or architect ("Inspector") other than the Architect. The fees and expenses to be paid the Inspector shall be provided by the City as part of the City's Financial Contribution. The Inspector shall be selected by the City. The Inspector shall review for the parties all activities associated with the completion of the Theater Project, which Inspector shall certify or otherwise indicate to the Escrowee on the form attached hereto as Exhibit J that the completion of such work of the Theater Project to the date of each Request for Advance and as certified by the Architect is as set forth in said Request for Advance and certificate, and that such renovation, rehabilitation or construction work, as the case may be, complies with the Working Drawings and

99108848

# UNOFFICIAL COPY

Specifications, such indication from the Inspector to be a condition precedent to the approval by the Escrowee of any submitted Request for Advance of Goodman. A representative of the DPD shall have the right, but not the obligation, to accompany the Inspector during inspection of the Theater Project.

Prior to the final completion of the Theater Project, Goodman, the Inspector and the DPD (or its designee) shall conduct a preliminary inspection of the Theater Project and thereafter the Inspector (in consultation with the Goodman, the City and the Architect) shall prepare a list of punch list items to be undertaken by Goodman. Once such work is completed, the Inspector and the DPD (or its designee) shall re-inspect the Theater Parcel, and if satisfied, the Inspector shall issue a certificate ("Final Inspector's Certificate") that the construction of the Theater Project is completed in accordance with the Theater Working Drawings and Specifications. The determination of the Inspector with regard to Goodman's construction of the Theater Project in accordance with the Theater Working Drawings and Specifications as described in this section shall be binding on the parties.

# UNOFFICIAL COPY

7. Disbursements; Deficiencies. The Escrowee shall pay any and all such disbursements directly to the Development Manager, the Pre-Construction Consultant, or the General Contractor, as the case may be, or such person or persons as have actually supplied labor, materials, property or services in connection with the undertaking of the pertinent work affecting the completion of the Theater Project. In no event shall the Escrowee be required to disburse any Advance which, in the Lender's or the City's reasonable opinion, shall reduce the remaining amounts available below the amount required to pay for the balance of the work, labor and materials necessary to fully complete the Theater Project. In accordance with the provisions of subsection 4.8 above, if at any time it shall appear to the City that the undisbursed portion of funds available and the remaining contingency reserve is insufficient, then Goodman, within ten (10) days of written notice from the DPD or the Escrowee, shall be required to deposit such necessary funds in Escrow or otherwise to identify to the DPD other funds to be made available as contingency or otherwise to complete the Theater Project and, until then, it is expressly understood and agreed that, absent an express waiver by the City, no advance

991068848

# UNOFFICIAL COPY

shall be made by the Escrowee. In the event that at any time the Escrowee (at the written request of the City) demands that Goodman remedy any such deficiency and Goodman shall fail to do so as aforesaid, then the Escrowee shall have no obligation to make further disbursement until said deficiency is remedied. In the event the City shall require and Goodman 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. Goodman's failure either to remedy any deficit or to identify other funds to be made available as contingency or otherwise complete the Theater Project as aforesaid shall constitute a default of the terms of the Agreement.

8. Investment of Escrow Funds. The City's Financial Contribution, upon its deposit from time to time by the City in the Escrow, shall be invested or reinvested by the Escrowee at the written direction of the City to the extent



# UNOFFICIAL COPY

permitted by law. Any interest received upon said investment of escrow funds shall be paid to the City.

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

**4.10 Commencement and Completion of the Project.** Within thirty (30) days of the achievement by Goodman of the conditions described in subsection 3.3(a)-(d) above: (i) Goodman shall commence with the rehabilitation, renovation or construction of the Theater Project; and (ii) the Restaurant/Retail Developer, as additionally provided in the Sublease, shall undertake to construct the Restaurant/Retail Project. Except as otherwise provided in the Agreement, Goodman shall complete the Theater Project within eighteen (18) months, and the Sublease shall

99108848

# UNOFFICIAL COPY

provide for the completion of the Restaurant/Retail Project within twelve (12) months of commencement. Goodman agrees for itself, its successors and assigns, that Goodman, its successors and assigns, shall promptly begin and diligently complete the Theater Project within the specified time period, and shall obligate (pursuant to the Sublease) the Restaurant/Retail Developer to promptly begin and diligently complete the Restaurant/Retail Project within the specified time period.

**4.11 Certificate of Completion.** After the rehabilitation, renovation and construction of the pertinent Project has been completed in accordance with the approved pertinent Working Drawing and Specifications, the Agreement and the Redevelopment Documents, the City, upon written request by Goodman, shall furnish Goodman with an appropriate Certificate. The Certificate shall be a conclusive determination of satisfaction and termination of the covenants in the Agreement with respect to the obligations of Goodman (or the Restaurant/Retail Developer) and its successors and assigns to complete the pertinent Project. The Certificate, however, shall not constitute evidence that Goodman (or the Restaurant/Retail Developer) has complied with any applicable provisions of federal, state and local laws, ordinances and regulations with regard to the completion of the pertinent

99108848

# UNOFFICIAL COPY

Project. The Certificate shall be in recordable form. Upon written request by Goodman for the Certificate, the DPD and the Inspector, within thirty (30) days after receipt of the same, shall undertake an inspection of the pertinent Project and thereafter the DPD shall provide Goodman either with the Certificate or a written statement indicating in adequate detail how Goodman has failed to complete the pertinent Project in conformity with the Redevelopment Documents, the Agreement or the Working Drawings and Specifications, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the DPD, for Goodman to perform in order to obtain the Certificate. Goodman shall have ninety (90) days to correct any such nonconformity or default. Upon compliance with the DPD's requirements, Goodman shall resubmit a written request for a Certificate from the City.

**4.12 Barricades.** Prior to the commencement of any construction activity requiring barricades, Goodman shall install a construction barricade of a type and appearance satisfactory to the DPD and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The DPD shall have the right to approve the maintenance, appearance, color

99108848

# UNOFFICIAL COPY

scheme, painting, nature, type, content and design of all barricades.

**4.13 Signs and Public Relations.** Goodman shall erect a sign of size and style approved by the DPD in a conspicuous location at the Property during the construction of the Theater Project, indicating that financing for the Theater Project has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Theater Project and other pertinent information regarding Goodman, the Theater Project and the Property in the City's promotional literature and communications.

**4.14 Insurance.** Goodman shall provide and maintain, during the term of the Agreement and during the time period following final completion of the respective Project if Goodman is required to perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

(a) **Worker's Compensation and Employers Liability insurance.** Workers Compensation and Employers Liability Insurance, as prescribed by applicable law covering all employees who are to provide a service under the Agreement and Employers Liability

# UNOFFICIAL COPY

coverage with limits of not less than \$500,000 for each accident or illness.

(b) Commercial Liability Insurance (Primary and Umbrella).

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following completion of the Project), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City, its employees, elected officials, agents, and representatives are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(c) Automobile Liability Insurance (Primary and Umbrella).

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Goodman shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

# UNOFFICIAL COPY

(d) All Risk Builders Risk Insurance. During the undertaking of the applicable Project and any subsequent repair work, Goodman or its Development Manager or the General Contractor, shall provide or cause to be provided All Risk Builders Risk Insurance, at replacement cost, for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverages shall include but not be limited to the following: right to partial occupancy, material stored off-site and in-transit, boiler and machinery, earth movement, flood, including surface water backup, sewer backup and seepage, collapse, water damage, debris removal, faulty workmanship or materials, testing, and mechanical electrical breakdown. The City shall be named as loss payee.

(e) Contractors Pollution Liability Insurance. When any work related to the applicable Project is undertaken which may cause an environmental exposure, Goodman shall provide or cause to be provided Contractors Pollution Liability Insurance with limits of not less than \$1,000,000 insuring bodily injury, property damage, and environmental clean-up costs. The City is to be named an additional insured on a primary, non-contributory basis.

(f) All Risk Property Insurance. Upon completion of the applicable Project as evidenced by the issuance of the pertinent

# UNOFFICIAL COPY

Certificate, Goodman shall provide All Risk Property insurance in the amount of full replacement value of the applicable Project (including a special endorsement insuring the replacement value of the facades of the Harris and Selwyn Theaters) including improvements and betterments to protect against loss or damage to or destruction of the Harris and Selwyn Theaters, the Theater Project and the Restaurant/Retail Project, as the case may be. Coverage extensions shall include boiler and machinery collapse, sewer back-up, sprinkler leakage and floor. The City shall be named as loss payees.

In the event of any damage or destruction to the Harris and Selwyn Theaters or other of the Theater Project improvements caused by fire or other hazard, the insurance proceeds shall be utilized toward the restoration, repair, and rehabilitation of the Harris and Selwyn Theaters and the other Theater Project improvements; provided, however, that prior to the issuance of the Certificate by the City, if Goodman and the City conclude that the Theater Project improvements are destroyed beyond repair and will not be rebuilt, the Theater Ground Lease shall be terminated, Goodman and the City shall share in the insurance proceeds on the basis of their respective financial contributions toward the completion of the Theater Project.

# UNOFFICIAL COPY

If the Theater Project improvements are destroyed beyond repair subsequent to the issuance by the City of the Certificate but prior to the expiration of the term of the Agreement and the Theater Ground Lease, and if Goodman, the permanent lender (if any) and the City mutually conclude that the Theater Project improvements are destroyed beyond repair and will not be rebuilt, then the Theater Ground Lease shall be terminated and the insurance proceeds shall be distributed in the following order: (1) the lender shall be repaid any amounts due and owing under the First Leasehold Mortgage (or its replacement); (2) the City shall be reimbursed for the amounts disbursed of the City's Financial Contribution; (3) Goodman shall be entitled to a reimbursement of all of its reasonable Project costs as certified by Goodman to the City; and (4) any remaining sums not utilized in (1) and (3) above shall be distributed to the City and Goodman on a pro-rata basis determined by each parties' respective contribution expended on the Project and the redevelopment of the Theater Project.

In the event of any damage or destruction to the Restaurant/Retail Project improvements caused by fire or other hazard, it is agreed, and the Sublease shall so provide, that the insurance proceeds shall be utilized toward the reconstruction, restoration or repair of Restaurant/Retail Project improvements;



# UNOFFICIAL COPY

provided, however, that prior to the issuance of the Certificate by the City, if Goodman, the Restaurant/Retail Developer and the City conclude that the Restaurant/Retail Project improvements are destroyed beyond repair and will not be rebuilt, the Restaurant/Retail Ground Lease and the Sublease as to the Restaurant/Retail Parcel shall be terminated, and the Restaurant/Retail Developer and the City shall share in the insurance proceeds on the basis of their respective financial contributions toward the completion of the Restaurant/Retail Project.

If the Restaurant/Retail Project improvements are destroyed beyond repair subsequent to the issuance by the City of the Certificate but prior to the expiration of the term of the Restaurant/Retail Ground Lease and the Sublease, and if Goodman, the Restaurant/Retail Developer, the permanent lender (if any) and the City mutually conclude that the Restaurant/Retail Project improvements are destroyed beyond repair and will not be rebuilt, it is agreed, and the Sublease shall so provide, that the Restaurant/Retail Ground Lease and the Sublease shall be terminated, and insurance proceeds shall be distributed in the following order: (1) the lender shall be repaid any amounts due and owing under the R/R Leasehold Mortgage (or its replacement);

# UNOFFICIAL COPY

(2) Restaurant/Retail Developer shall be entitled to a reimbursement of all of its reasonable Project costs as certified by the Restaurant/Retail to the City; (3) the City shall be reimbursed for any of the site preparation work costs allocable to the Restaurant/Retail Parcel; and (4) any remaining sums not utilized in (1)-(3) above shall be distributed by each parties' respective contribution expended on the Restaurant/Retail Project.

(g) Professional Liability Insurance. When any architects, engineers, the Development Manager or other professional consultants perform work in connection with the Agreement and the construction of the applicable Project, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000. Coverage shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(h) Valuable Papers Insurance. When any plans, designs, drawings, specifications and documents are produced or used under the Agreement, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have

# UNOFFICIAL COPY

limits sufficient to pay for the re-creation and reconstruction of such records.

## Additional Requirements:

(aa) Goodman and/or the Restaurant/Retail Developer will furnish the City, in care of the Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement (and during the terms of the Ground Leases), and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of the Agreement or the Ground Leases. Goodman and/or the Restaurant/Retail Developer shall submit evidence of insurance on the City of Chicago Insurance Certificate Form prior to possession of the Property pursuant to the Agreement and the Ground Leases.

(bb) The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Goodman shall not be deemed to be a waiver by the City. Goodman shall advise all insurers of the

# UNOFFICIAL COPY

provisions herein regarding insurance. Non-conforming insurance shall not relieve Goodman of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work or suspend the Agreement until proper evidence of insurance is provided.

(cc) The insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewal.

(dd) Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by Goodman and/or the Restaurant/Retail Developer, as applicable.

(ee) Goodman agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

(ff) Goodman expressly understands and agrees that any coverages and limits furnished by Goodman shall in no way limit Goodman's liabilities and responsibilities specified within the Agreement or by law.

(gg) Goodman expressly understands and agrees that any insurance or self insurance programs maintained by the City of