



City of Chicago



SO2021-791

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	2/24/2021
Sponsor(s):	Lightfoot (Mayor)
Type:	Ordinance
Title:	Second amendment to ground lease agreement with Music and Dance Theater Chicago, Inc., d.b.a. Harris Theater for Music and Dance, formerly Music and Dance Theater Chicago for use rights at Pritzker Stage and associated properties at Millennium Park and certain venues at Chicago Cultural Center
Committee(s) Assignment:	Committee on Housing and Real Estate

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago (the "City"), as landlord, and Music and Dance Theater Chicago, Inc., doing business as Harris Theater for Music and Dance (formerly known as Chicago Music and Dance Theater, doing business as Music and Dance Theater Chicago), an Illinois not-for-profit corporation (the "Theater"), as tenant, executed that certain Ground Lease dated as of February 1, 2002 (the "Original Lease") for the Theater's Harris Theater in the City's Millennium Park; and

WHEREAS, on April 13, 2011, the City and the Theater executed that certain First Amendment to Ground Lease (the "First Amendment") (the Original Lease as amended by the First Amendment shall be known herein as the "Lease"); and

WHEREAS, the City and the Theater now desire to amend the Lease further regarding, among other things, expenses and uses pursuant to a proposed second amendment in substantially the form attached hereto as an exhibit (the "Second Amendment," to which a copy of the Lease is itself attached as an exhibit); now, therefore,

BE IT ORDAINED BY THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The Second Amendment shall contain such revisions in text as the Commissioner of the Department of Cultural Affairs and Special Events or his designee (the "Commissioner") executing the same shall determine are necessary or desirable, the execution thereof, and any amendment thereto, by the Commissioner to evidence the City Council's approval of all such revisions. The Commissioner is hereby authorized to execute the Second Amendment on behalf of the City and to take such actions and do such things as shall be necessary to perform, carry out, give effect to and consummate the transactions contemplated by this ordinance, including, but not limited to, the exercise of any power or authority delegated to such official of the City under this ordinance with respect to the Second Amendment, but subject to any limitations on or restrictions of such power or authority as herein set forth, and any actions heretofore taken by such officers of the City in accordance with the provisions of this ordinance are ratified and approved.

SECTION 3. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

SECTION 4. This ordinance shall be effective as of the date of its passage and approval.

EXHIBIT TO SUBSTITUTE ORDINANCE – THE SECOND AMENDMENT

2

SECOND AMENDMENT TO GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO GROUND LEASE AGREEMENT (the "Second Amendment") is made and effective as of _____, 2021 by and between CITY OF CHICAGO, a Municipal Corporation and Home Rule Unit of Government (the "City" or "Landlord"), acting by and through its Department of Cultural Affairs and Special Events, and MUSIC AND DANCE THEATER CHICAGO, INC., doing business as Harris Theater for Music and Dance (formerly known as Chicago Music and Dance Theater, doing business as Music and Dance Theater Chicago), an Illinois not-for-profit corporation ("Tenant" or the "Theater").

RECITALS

WHEREAS, Landlord and Tenant executed that certain Ground Lease dated as of February 1, 2002 (the "Original Lease"); and

WHEREAS, on April 13, 2011, Landlord and Tenant executed that certain First Amendment to Ground Lease (the "First Amendment") (the Original Lease as amended by the First Amendment shall be known herein as the "Lease," a copy of which (without all exhibits) is attached as an exhibit hereto); and

WHEREAS, pursuant to an ordinance adopted by the City Council of the City on _____, 2021, the Landlord and the Tenant now desire to amend the Lease further as set forth below.

NOW THEREFORE, in consideration of the above recitals, and mutual promises, covenants, rights and obligations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and Tenant mutually agree as follows:

1. Recitals and Terms of Art. The foregoing recitals are hereby incorporated into and made a part of this Second Amendment by this reference. All capitalized terms in this Second Amendment shall have the same meaning ascribed thereto in the Lease, unless otherwise provided herein.
2. Incorporation into Lease. This Second Amendment shall be incorporated into the Lease as executed by Landlord and Tenant. Unless otherwise expressly provided herein, all other provisions of the Lease shall remain in full force and effect and shall be applicable to this Second Amendment. Unless expressly provided herein, if there is a conflict between the terms and conditions of the Lease and the terms and conditions of the Second Amendment, the terms and conditions of this Second Amendment shall prevail.
3. Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
4. Payment of Expenses. Section 2.6(c) of the Lease is hereby deleted and replaced in its entirety as follows:

"The City's Expense Contribution shall increase by two percent (2%) each calendar year, on a non-compounding basis (e.g., the City Expense Contribution shall be Three Hundred Eighty-Seven Thousand Six Hundred and No/100 Dollars (\$387,600.00) in 2021, Three Hundred Ninety-Five Thousand Two Hundred and No/100 Dollars (\$395,200.00) in 2022, and so forth)."

For purposes of clarification, the Section 2.6(c)(ii) added to the Original Lease by the First Amendment is deleted in its entirety and of no further force or effect.

5. [intentionally omitted]

6. Theater's Additional Use Rights. The third full paragraph on the first page of Exhibit C to the First Amendment is hereby amended to read as follows:

"Provided that the City gives written notice to the Theater on or before September 1st of the preceding calendar year (such written notice, the "September 1st Notice"), the City shall have a first priority right to use the Facility (excluding the Theater's Exclusive Elements) for up to twenty-five (25) dates, as specified in such September 1st Notice, each year during the months of June, July and August; provided, however, that the City may also request (a) any of such 25 dates during the months of September through May (but without any first priority right thereto); Other uses shall be for users under the auspices of DCASE. In no event shall such uses include commercial use by a private party. If the City's September 1st Notice identifies less than twenty-five (25) dates, the City may thereafter request further use of the Facility in accordance with this paragraph. Any further uses of the Facility (excluding the Theater's Exclusive Elements) by the City during such months beyond those uses specified in the City's September 1st Notice shall be subject to the mutual agreement of the City and the Theater. Such further uses may include, for example, the need to use Theater stage for rehearsal purposes on days when, for example, due to a conflicting use of the Pritzker Stage, DCASE and/or its approved users are required to rehearse indoors. The Theater shall not unreasonably withhold its agreement to such additional use of the Facility by the City. Theater shall be entitled to charge rent and recover all other costs that the Theater would be entitled to recover under its then standard rental agreement as a result any such additional uses that result in the City's use of the Facility more than twenty five (25) times (i.e., the priority uses specified in the City's written notice, plus such additional City uses as to which the parties mutually agree, up to a total of twenty-five (25) City uses)."

7. Theater's Additional Use Rights. The second full paragraph on the second page of Exhibit C to the First Amendment is hereby amended to read as follows:

"The City agrees that the Theater shall have the right to make use of the Terrace, the Millennium Park North and South Promenades, the Chicago Cultural Center (specifically and exclusively, Preston Bradley Hall, G.A.R. Hall and Rotunda, Claudia Cassidy Theater and Millennium Park Room) and/or the Pritzker Stage for up to thirteen (13) Tenant-related events, which shall be deemed to include uses by the

Music and Dance Theater of Chicago, uses by Tenant's permitted Subtenants, and such other not-for-profit performing arts organizations, and such uses as to which the City may consent in writing, which consent shall not be unreasonably withheld, conditioned or delayed. In no event shall such uses include commercial use by a private party, except that 4 of the foregoing 13 Tenant-related events may include uses by commercial organizations in conjunction with Theater events."

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Ground Lease as of the day and year first above written.

LANDLORD:

THE CITY OF CHICAGO,
an Illinois Municipal Corporation and Home Rule Unit of Government

DEPARTMENT OF CULTURAL AFFAIRS AND SPECIAL EVENTS

By: _____
Commissioner

APPROVED AS TO FORM AND LEGALITY:
BY: DEPARTMENT OF LAW

By: _____
Deputy Corporation Counsel
Real Estate Division

TENANT:

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

By: _____

Name: _____

Its: _____

EXHIBIT TO SECOND AMENDMENT – THE LEASE
(COMPRISED OF THE FIRST AMENDMENT AND THE ORIGINAL LEASE)

FIRST AMENDMENT TO GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT TO GROUND LEASE AGREEMENT ("Amendment") is made and entered into this 13th day of April, 2011, but is effective as of January 1, 2011 ("Effective Date"), by and between, the CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government, acting by and through its Department of Cultural Affairs and Special Events (hereinafter referred to as "Landlord" or the "City") and CHICAGO MUSIC AND DANCE THEATER, an Illinois not-for-profit corporation doing business as Music and Dance Theater Chicago (hereinafter referred to as "Tenant" or the "Theater"). This Amendment amends that certain Ground Lease made as of February 1, 2002 by and between Landlord and Tenant (the "Original Lease," and, as amended hereby, the "Lease"). Capitalized terms not otherwise defined in this Amendment shall have the meaning given in the Original Lease.

RECITALS

- A. Landlord and Tenant have previously entered into the Original Lease.
- B. As contemplated under the Original Lease, the Facility has been constructed and is now operational.
- C. The Millennium Project has also been completed. Such project includes, among other things, the Pritzker Stage, as depicted in Exhibit A to this Amendment, and a common area commonly known as "The Promenade," as depicted in Exhibit B to this Amendment.
- D. Since the execution of the Original Lease and the completion of the Facility, the parties have cooperated in the programming and shared use of the Facility.
- E. Based on the parties' operating experience to date, and in order to better program and utilize the Facility and to manage the costs and maximize the revenues associated therewith, the parties are entering into this Amendment to reallocate certain rights and responsibilities of the parties under the Lease.
- F. The Board of Directors of the Theater has approved and authorized the execution of this Amendment by resolution adopted March 3, 2011.
- G. The City Council of the City has approved and authorized the execution of this Amendment by ordinance adopted April 13, 2011 and published in the Journal of Proceedings of the City Council for such date at pages 115241 through 115261.

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the parties hereto agree and covenant as follows:

- I. Amendments to Original Lease. The following provisions in the Original Lease are amended as set forth below, effective as of the Effective Date. Provisions in the Original Lease that are not identified below shall remain in full force and effect. In the event of a conflict

between the terms and conditions in the Original Lease and the terms and conditions in this Amendment, the terms and conditions in this Amendment shall govern and control.

ARTICLE 1 CERTAIN DEFINITIONS

A. Deletion of Certain Definitions in the Original Lease. The following defined terms in the Original Lease are deleted.

1. The defined term "Adjustment Date" in Section 1.1 shall be deleted.
2. The defined term "Adjustment Year" in Section 1.2 shall be deleted.
3. The defined term "CDOT" in Section 1.7 shall be deleted.
4. The defined term "City's Proportionate Share" in Section 1.19 shall be deleted.

B. Amendment of Certain Definitions in the Original Lease. The following defined terms in the Original Lease are amended:

1. The defined term "Prime Rate" in Section 1.65 shall be amended by deleting the words "Bank One" and inserting the words, "J.P. Morgan Chase, N.A."

2. Section 1.87 shall be amended in its entirety to state: "1.87 "Theater's Share of Expenses" shall mean the total Expenses (excluding any Allocated Expenses payable by the City pursuant to Section 2.6.a), less the City's Expense Contribution, as paid pursuant to Section 2.6, except that with respect to Capital Improvements, Theater's Share shall mean the Theater's share of such Capital Improvement costs as determined pursuant to Section 2.12 of the original Lease, as amended."

C. Addition of New Defined Terms. The following defined terms shall be added:

1. "City's Expense Contribution" shall mean, commencing January 1, 2011 and thereafter through December 31, 2020, the sum of Three Hundred Eighty Thousand and No/100 Dollars (\$380,000) per annum, which City shall pay to Theater in accordance with Section 2.6 as City's annual contribution towards all Expenses. After December 31, 2020, the City's Expense Contribution is subject to adjustment as described in Section 2.6.c of this Amendment.

2. "DCASE" shall mean the Department of Cultural Affairs and Special Events of the City of Chicago, or any successor department thereto.

3. "Theater's Additional Use Rights" shall mean the right of Theater to use the Facility, the Terrace, the Pritzker Stage and the Promenade (collectively, the "Additional Use Areas") for the purposes, at the times, and subject to the terms and conditions set forth in Exhibit C, and otherwise in accordance with this Lease.

ARTICLE 2
PREMISES AND TERM OF LEASE

A. 2.1 Statement of Intentions. Section 2.1(ii) of the Original Lease shall be amended in its entirety to state: "(ii) that all Expenses (as hereafter defined) of operating the Facility shall be paid for by the Theater, subject to the City's obligation to pay annually the City's Expense Contribution towards such Expenses pursuant to Section 2.6 below."

B. 2.3 Use; Nature of Relationship.

(i) In the first sentence of Section 2.3.a of the Original Lease, clause, (ii) shall be amended in its entirety to state:

"(ii) during the City's Season, to the non-exclusive use of the Seasonal Elements, in accordance with the additional agreements of the parties set forth in Exhibit C to the Amendment, all in accordance with the terms of this Lease."

(ii) For purposes of clarity, Theater acknowledges that City may transfer its interest in the Lease to the Chicago Park District or another governmental authority permitted under Section 27.2 of the Original Lease pursuant to Section 2.3.b(i) (and Section 27.2) of the Original Lease, so long as such transferee takes such interest expressly subject to the terms of the Lease, and that the use of the word, "including," in such Section 2.3.b(i) shall be construed to mean, "including, but not limited to."

2.5 Management of Facility. Section 2.5.c of the Original Lease shall be amended by deleting the words, "its Proportionate Share of Expenses," and inserting, "the City's Expense Contribution", in lieu thereof.

2.6 Payment of Expenses. Section 2.6 of the Original Lease shall be amended by adding the following after the second sentence thereof and amending the balance of said section in its entirety to state:

"Expenses shall be paid as described in this Section 2.6.

a. Subject to the next two sentences, Theater shall pay all Expenses. City shall annually pay to Theater an amount equal to City's Expense Contribution as its contribution towards the Expenses. In addition, the City shall pay all separately metered utilities and all separately charged, telecommunications, internet, and similar charges billed directly to the City. All other Expenses shall be Theater's obligation. The total amount of Expenses in any calendar year, less City's Expense Contribution, shall constitute the "Theater's Share" of such Expenses.

b. City shall annually pay City's Expense Contribution to Theater in a single lump sum payment on or before June 1st of each calendar year. Any

unpaid City Expense Contribution shall, if not paid by July 1st of each calendar year, thereafter bear interest at the Prime Rate plus five percent (5%).

c. No later than July 1, 2020, Theater and the City shall meet and negotiate in good faith to arrive at an adjustment to the City's Expense Contribution for the period on and after January 1, 2021. Until such time as Theater and City have agreed on such adjusted City Expense Contribution, (i) the City's Expense Contribution shall increase by two percent (2%) each calendar year, on a non-compounding basis (e.g., the City Expense Contribution would be Three Hundred Eight-Seven Thousand Six Hundred and No/100 Dollars (\$387,600) in 2021, Three Hundred Ninety-Five Thousand Two Hundred and No/100 Dollars in 2022, and so forth), and (ii) Exhibit C shall be amended so that, on and after January 1, 2021, the City shall have a first priority right to use the Facility for only fifteen (15) uses, instead of twenty-five (25) uses, and all references in Exhibit C to "twenty-five (25)" shall be deemed to read "fifteen (15)."

C. 2.7 Readjustments. Section 2.7 of the Original Lease shall be amended in its entirety to state:

"Expenses shall be paid as described in Section 2.6 above and there shall be no reconciliations or adjustments."

D. 2.8 Books and Records. Section 2.8 of the Original Lease shall be amended by deleting the words, "an Adjustment Year" and inserting the words, "fiscal year (July 1 - June 30" in lieu thereof.

E. 2.9 Audit Procedures. Section 2.9 of the Original Lease shall be amended in its entirety to state:

"Upon written request by City made within nine months after the end of Theater's fiscal year, Theater shall provide City with an annual audited statement signed by a certified public accountant concerning all Expenses, Capital Improvements costs, and disbursements by Theater for the fiscal calendar year in Theater's standard format. If, but for City's request, Theater would not otherwise have obtained such statements, then the cost of such statements shall be a City Allocated Expense."

2.10 Proration and Survival. Section 2.10 of the Original Lease shall be amended in its entirety to state: "For any partial calendar year during the Term, City shall pay a pro rated share of the City's Expense Contribution based on the number of days of the Term falling within the calendar year. Such obligation, if unpaid, shall survive the expiration or termination of this Lease."

I. 2.11 Off-Season Use. Section 2.11 shall be amended to include the following two, new concluding sentences: "Without limiting the generality of the foregoing, City agrees

that, subject to the provisions of Exhibit C, Theater shall have the use of such Seasonal Elements during June, July and August in accordance with the Theater's Additional Use Rights as set forth in Exhibit C to the Amendment, and otherwise in accordance with the terms of this Lease. City acknowledges and agrees that Theater shall have the right to all revenues realized through the events held pursuant to Theater's exercise of Theater's Additional Use Rights, both as to revenues realized through Theater's eight (8) permitted uses under Exhibit C to this Amendment (i.e., the permitted uses of the Additional Use Areas) and through Theater's marketing of the Premises for additional events during the months of June, July and August and any additional performances or other uses permitted under Exhibit C resulting from such marketing efforts. The City shall have the right to all revenues realized through events held pursuant to the City's exercise of its use rights under Exhibit C to this Amendment (i.e., the 25 priority uses, and any other uses permitted under Exhibit C).

J. 2.14 Common Support Elements; Soil Retention Facilities. The second sentence in Section 2.14.c shall be amended in its entirety to state: "Thirty-seven and one-half percent (37.5%) of the cost of maintenance of the Common Support Elements and the Soil Retention Facilities shall be borne by the Theater and sixty-two and one-half percent (62.5%) of such costs shall be borne by City."

K. 2.15 Freight Elevator and Loading Dock. The second sentence in Section 2.15.c shall be amended in its entirety to state: "The cost of maintenance of the Freight Elevator to be borne thirty-seven and one-half percent (37.5%) by the Theater, and sixty-two and one-half percent (62.5%) by City."

L. 2.18 Garage Elevator Access. Section 2.20 shall be amended to include the following new, concluding subparagraph:

"e. Notwithstanding Section 4.3 above, the Theater acknowledges that subsequent to the execution of the Original Lease, the City has entered into that certain Chicago Downtown Public Parking System Concession Agreement and Lease Agreement dated as of November 3, 2006 (as amended, the "Parking Garage Lease"), by and between City and Chicago Loop Parking, LLC (the "Garage Operator") pursuant to which City has leased its interest in the Garage and the Garage Elevator to Chicago Loop Parking, LLC. City represents and warrants to Theater that under the terms of the Parking Garage Lease, Chicago Loop Parking, LLC is responsible to the City for the maintenance of the Garage Elevator. Theater is authorized to contact Chicago Loop Parking, LLC, directly to request the performance of City's obligations under this Section 2.20, and City agrees to enforce the provision of the Concession Agreement with respect to the Garage Elevator, but nothing in this Section shall relieve City of its obligations under this Section 2.20."

ARTICLE 5 CONSTRUCTION

A. Completion of City Work. Theater acknowledges that prior to the date of this Amendment, City's construction-related obligations with respect to the City's Work under Article

5 of the Original Lease (and as otherwise provided for therein) have been satisfied, Final Completion of the Work (as applicable to the City's Work) has occurred, and Project Close-Out has occurred with respect to such work.

B. Completion of Theater Work. City acknowledges that prior to the date of this Amendment, Theater's construction-related obligations with respect to the Theater's Work under Article 5 of the Lease (and as otherwise provided for therein) have been satisfied, Final Completion of the Work (as applicable to the Theater's Work) has occurred, and Project Close-Out has occurred with respect to such work.

C. 5.7 Construction of City Improvements. Theater acknowledges and agrees that City's indemnification obligation under Section 5.7.g of the Original Lease, as applicable to the City's (or the City's contractors' and subcontractors') performance or non-performance of the City's Work, has terminated prior to the date of this Amendment (i.e., Theater has no indemnification claims against City related to such work). The requirements of Section 5.7.g applicable to the inclusion of indemnification language in Contracts entered into by City after the Commencement Date shall continue in full force and effect.

D. 5.10 Indemnification. City acknowledges and agrees that Theater's indemnification obligation under Section 5.10 of the Original Lease, as applicable to Theater's (or Theater's contractors' and subcontractors') performance or non-performance of the Theater's Work, has terminated prior to the date of this Amendment (i.e., City has no indemnification claims against Theater related to such work). The requirements of Section 5.10 applicable to the inclusion of indemnification language in Contracts entered into by Theater after the Commencement Date shall continue in full force and effect.

E. 5.11 Insurance During Construction. City and Theater each acknowledge and agree that it has no insurance claims related to the City's Work or the Theater's Work.

ARTICLE 10 ASSIGNMENT, SUBLETTING AND MORTGAGES

A. Applicability of Article 10 to Theater's Additional Use Rights. Article 10 (and, in particular, Sections 10.1.d and 10.4) shall apply to Theater's scheduling and use of the Seasonal Elements in accordance with Theater's Additional Use Rights as set forth in Exhibit C.

ARTICLE 14 REQUIREMENTS OF PUBLIC AUTHORITIES

A. 14.1 Compliance with Requirements. For purposes of clarity, Section 14.1 is amended to include the following, new concluding sentence: "Theater's compliance under this Section 14.1 (to the extent that the cost of such compliance would constitute an Expense and not be considered a Capital Improvement) shall be at Theater's sole cost and expense."

ARTICLE 19 INDEMNIFICATION

A. 19.1 Theater's Indemnification of City. City acknowledges and agrees that as of the date of this Amendment, it has no knowledge of any event or circumstance that would give rise to a City claim for indemnification against Theater pursuant to Section 19.1 of the Original Lease.

B. 19.4 City Indemnification of Theater. Theater acknowledges and agrees that as of the date of this Amendment, it has no knowledge of any event or circumstance that would give rise to a Theater claim for indemnification against City pursuant to Section 19.4 of the Original Lease.

ARTICLE 23 THEATER'S PERMITTED USE

The first sentence of Article 23 shall be amended in its entirety to state: "Subject to the provisions of law and this Lease, Theater shall be permitted to occupy the Premises in accordance with the Certificates of Occupancy for the Premises in effect from time to time during the Term for use as a theater and related support and meeting facilities, for the uses permitted under Theater's Additional Use Rights as set forth in Exhibit C to the Amendment, and for no other use or purpose (the "Permitted Use")."

The last sentence of Article 23 is hereby amended in its entirety to state: "Notwithstanding the foregoing, Theater shall not cause or allow the Seasonal Elements to be used for performances that are unlawful or violate any copyright or infringe upon the literary or any other rights of any Person, including the right to privacy of any Person or which are in violation of any Requirement.

ARTICLE 24 EVENTS OF DEFAULT AND REMEDIES

A new Section 24.18 shall be added that states:

A. 24.18 Limitation on Damages. Notwithstanding anything in Article 24 or otherwise in the Original Lease to the contrary, in no event shall either City or Theater be entitled to consequential, punitive, special, or other extraordinary damages.

ARTICLE 25 NOTICES

A. 25.1 Current Addresses for Notice. Sections 25.1.a and 25.1.b shall be amended in their entirety to state:

a. if given by City , by a nationally recognized overnight courier service, personal delivery or by mailing the same to Theater by certified or

registered mail, postage prepaid, return receipt requested, addressed to Theater at the Premises, with a copy thereof to Richard L. Ingram, Esq. Shefsky & Froelich Ltd., 111 East Wacker Drive, Suite 2800, Chicago, Illinois 60601, in both instances, and/or to such other address(es) and attorneys as Theater may from time to time designate by Notice given to City in the manner set forth below, except that at no time shall City be required to give, in the aggregate, more than four Notices or copies thereof, including the notices described in Section 25.3;

b. if given by Theater, by actual personal delivery, including delivery by a nationally recognized overnight courier service or by mailing certified or registered mail, postage prepaid, return receipt requested, to City at Office of the Mayor, City of Chicago, 121 North LaSalle Street, Room 500, Chicago, Illinois 60602, with copies thereof to: (i) Commissioner, Department of Cultural Affairs and Special Events, City of Chicago, 78 E. Washington Street, Suite 300, Chicago, Illinois 60601; and (ii) Corporation Counsel, Department of Law, City of Chicago, 121 N. LaSalle Street, Room 600, Chicago, Illinois 60602 and/or to such other address(es) and attorneys as City may from time to time designate by Notice given to Theater in the manner set forth below, except that at no time shall Theater be required to give, in the aggregate, more than four Notices or copies thereof.

ARTICLE 40 AUTHORITY

A. 40.1 Consents and Approvals. Section 40.1 shall be amended by deleting, "Commissioner of Transportation," and by inserting "Commissioner of DCASE," in lieu thereof.

II. Other Agreements of the Parties. The parties also agree as follows:

A. Final Settlement of City's Contribution Toward Expenses. The parties agree that, prior to the date of this Amendment, the City has paid the following amounts to Theater for the calendar years set forth below as the City's contribution towards Expenses:

2004	\$191,356.66
2005	\$196,159.82
2006	\$131,063.11
2007	\$278,647.69
2008	\$358,568.65
2009	\$360,000.00
2010	\$360,000.00

In order to settle any disputes between the parties regarding the City's allocable share of such contributions towards Expenses, and notwithstanding the definition of "City's Proportionate Share," Section 2 (including, in particular, but without limitation, Section 2.5 and Section 2.6) or anything else in the Original Lease to the contrary, the Theater agrees to accept such prior payments in full and final satisfaction and accord of the City's payment obligation with respect to Expenses for such calendar years. Effective as of January 1, 2011 and thereafter, the City shall

pay the City Expense Contribution as its sole contribution towards Expenses in accordance with the terms of this Amendment.

B. Counterparts. This Amendment is comprised of several identical counterparts, having been fully executed by the parties and each to be deemed an original having identical legal effect.

C. City Required Provisions. Theater agrees to the terms and conditions of the required City provisions attached as Schedule 1 to this Amendment and makes the representations, warranties and covenants set forth therein, which, notwithstanding the Effective Date, shall be effective from and after March 9, 2011.

[SIGNATURES APPEAR ON NEXT PAGE]

LANDLORD:

CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government, acting by and through its Department of Cultural Affairs and Special Events

By: Kathleen J. Fulton
Acting Commissioner

APPROVED AS TO FORM AND LEGALITY:

BY: DEPARTMENT OF LAW

By: Steven J. Holler
Steven J. Holler
Deputy Corporation Counsel

TENANT:

CHICAGO MUSIC AND DANCE THEATER, an Illinois not-for-profit corporation d/b/a Music and Dance Theater Chicago

By: [Signature]

Its: President and Managing Director

SCHEDULE 1

A. Business Relationships. Tenant acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Tenant hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

B. Patriot Act Certification. Tenant represents and warrants that neither Tenant nor any Affiliate thereof (as defined in the next paragraph) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment, the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to Tenant that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Tenant, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

C. Prohibition on Certain Contributions-Mayoral Executive Order No. 05-1. Tenant agrees that Tenant, any person or entity who directly or indirectly has an ownership or beneficial interest in Tenant of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Tenant's contractors (i.e., any person or entity in direct contractual privity with Tenant regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Tenant and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Agreement by Tenant, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any

Other Contract between Tenant and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Tenant represents and warrants that from the date the City approached the Tenant or the date Tenant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Tenant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Tenant agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

Tenant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Tenant intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Tenant is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
 - 1. The partners have been residing together for at least 12 months.
 - 2. The partners have common or joint ownership of a residence.
 - 3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 - 4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

D. Waste Ordinance Provisions. Tenant warrants and represents that it has not violated and is not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code. Furthermore, in accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Tenant warrants and represents that it, and to the best of its knowledge without any duty of inquiry, its contractors and subcontractors, have not violated and are not in violation of any provisions of Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550 or 11-4-1560 of the Municipal Code (the "Waste Sections"). During the period while this Agreement is executory, Tenant's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Tenant's, general contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may further affect the Tenant's eligibility for future contract awards.

E. Cooperation With Office of Compliance. In accordance with Chapter 2-26-110 et seq. of the Municipal Code, the Tenant acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with

respect to this Lease, including, without limitation, making available to the Executive Director the department's premises, equipment, personnel, books, records and papers. The Tenant agrees to abide by the provisions of Chapter 2-26-110 et seq..

F. Cooperation With Inspector Generals. Tenant acknowledges that it is the duty of any grantee, subgrantee bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such grantee, subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 of the Municipal Code, and to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The Developer represents and warrants that it understands and will abide by all provisions of Chapter 2-55 and Chapter 2-56 of the Municipal Code and that the Tenant will inform its subcontractors of this provision and require their compliance.

EXHIBIT A

DEPICTION OF PRITZKER STAGE

[SEE ATTACHMENT]

EXHIBIT A

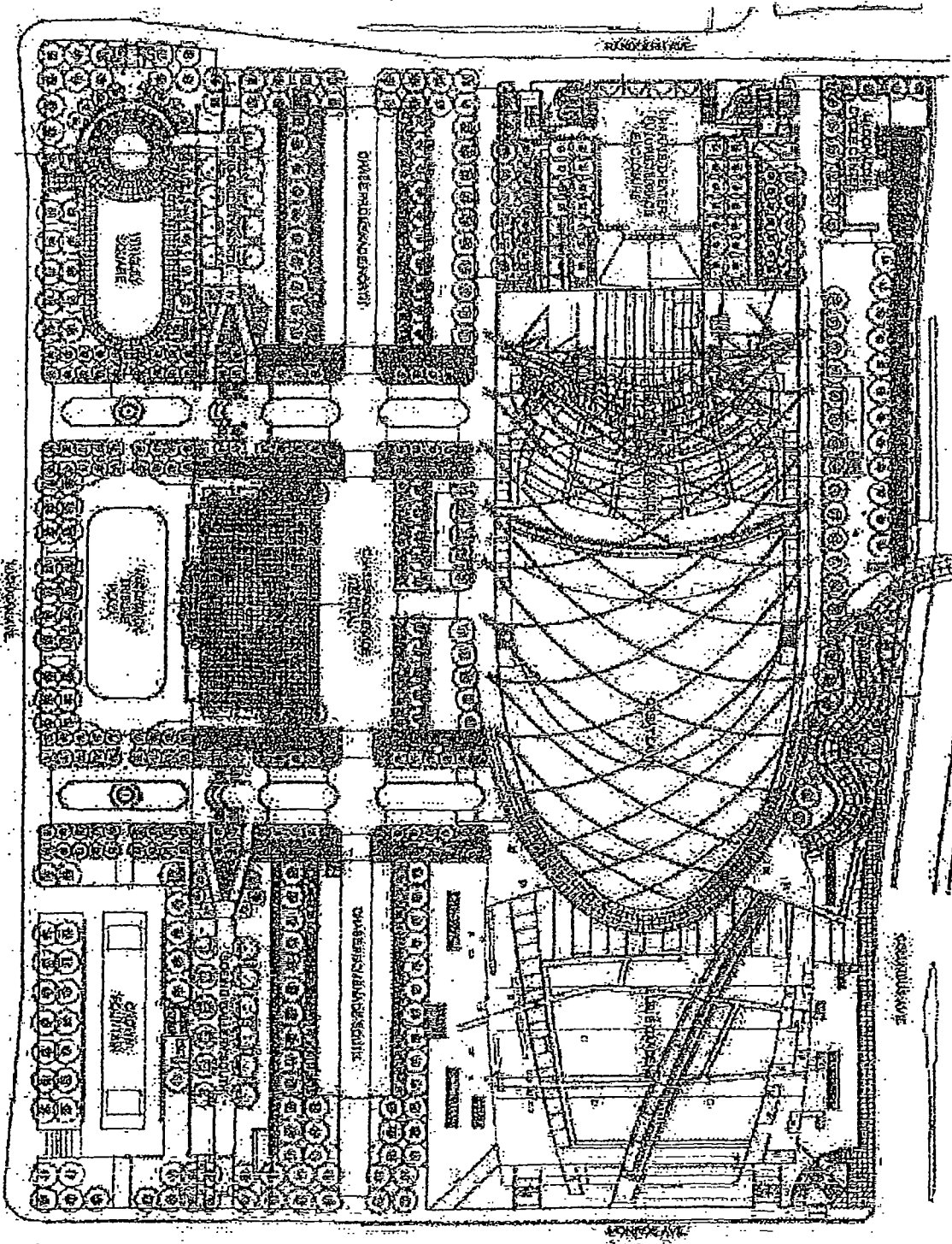
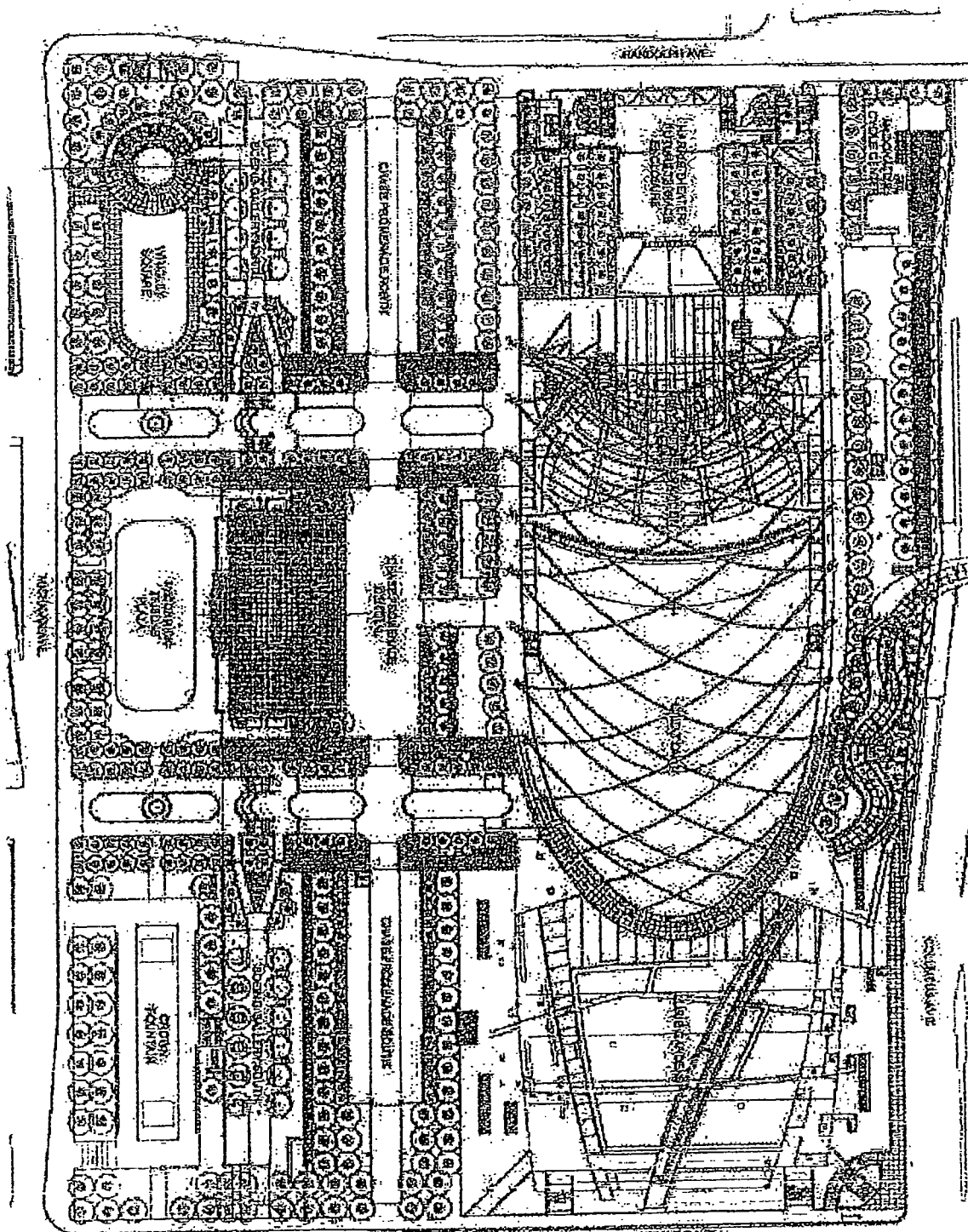


EXHIBIT B

FIRST AMENDMENT TO LEASE

(See Attachment)

EXHIBIT B



NOTE: "Promenade" includes Chase Promenade North and Chase Promenade South but not Chase Promenade Central

EXHIBIT C

THEATER'S ADDITIONAL USE RIGHTS

The provisions of this Exhibit C set forth certain additional use rights that the City has agreed to grant the Theater in consideration of the Theater's agreement to fix the City's Expense Contribution and in order for the parties to better program and utilize the Facility and to manage the costs and maximize the revenues associated therewith. In the event of an express conflict between the terms of this Exhibit C and the terms of the Lease, the terms of this Exhibit C shall be controlling; provided, however, that in the absence of such an express conflict, the terms of this Exhibit C, and the additional use rights granted to the Theater hereunder, shall otherwise be construed consistently with any applicable provisions of the Lease.

The City agrees that the Theater will administer the usage schedule for the Additional Use Areas for the entire calendar year, including marketing, booking and day-to-day administration. City will cooperate with Theater in connection with such scheduling.

Provided that the City gives written notice to the Theater on or before September 1st of the preceding calendar year (such written notice, the "September 1st Notice"), the City shall have a first priority right to use the Facility (excluding the Theater's Exclusive Elements) for up to twenty-five (25) dates, as specified in such September 1st Notice, each year during the months of June, July and August. As of the date of the Agreement, such uses are anticipated to be for the Grant Park Music Festival. Other uses shall be for users under the auspices of DCASE. In no event shall such uses include commercial use by a private party. If the City's September 1st Notice identifies less than twenty-five (25) dates, the City may thereafter request further use of the Facility in accordance with this paragraph. Any further uses of the Facility (excluding the Theater's Exclusive Elements) by the City during such months beyond those uses specified in the City's September 1st Notice shall be subject to the mutual agreement of the City and the Theater. Such further uses may include, for example, the need to use Theater stage for rehearsal purposes on days when, for example, due to a conflicting use of the Pritzker Stage, the Grant Park Music Festival is required to rehearse indoors. The Theater shall not unreasonably withhold its agreement to such additional use of the Facility by the City. Theater shall be entitled to charge rent and recover all other costs that the Theater would be entitled to recover under its then standard rental agreement as a result any such additional uses that result in the City's use of the Facility more than twenty-five (25) times (i.e., the priority uses specified in the City's written notice, plus such additional City uses as to which the parties mutually agree, up to a total of twenty-five (25) City uses), provided, however, that such costs shall not include any rental charge for use of the Theater stage for rehearsal purposes when a conflicting use of the Pritzker Stage necessitates an indoor rehearsal.

In addition, during the months of June, July and August, the City shall have a first priority right to use entire third floor dressing room space in the Facility. The use of additional dressing room space in the Facility during such months shall be mutually agreed to by the City and the Theater. Each party agrees that it shall not unreasonably withhold its consent to the other party's use of dressing room space. Theater shall be entitled to recover all customary costs incurred by Theater as a result of such additional uses (i.e., use of such additional dressing room space for uses beyond the City's first twenty-five (25) uses), including, without limitation, any

additional security, cleaning, waste removal, personnel and labor costs, maintenance and repair and similar operational and property management costs.

Subject to the Theater's first priority use as to dressing room space during the September through May time period, the City may request the use of dressing room space during such months in conjunction with the City's scheduling of events in Millennium Park. The Theater shall not unreasonably withhold its consent to such use of the dressing room space by the City during such months. Theater shall be entitled to recover all customary costs incurred by Theater as a result of such additional uses, including, without limitation, any additional security, cleaning, waste removal, personnel and labor costs, maintenance and repair and similar operational and property management costs.

The City agrees that the Theater shall have the right to make use of the Terrace, the Millennium Park Promenade, and/or the Pritzker Stage for up to eight (8) Tenant-related events, which shall be deemed to include uses by the Music and Dance Theater of Chicago, uses by Tenant's permitted Subtenants, and such other not-for-profit performing arts organization uses as to which the City may consent in writing, which consent shall not be unreasonably withheld. In no event shall such uses include commercial use by a private party.

The City and the Theater agree to cooperate in an effort to create jointly-produced events utilizing the Facility (or, as to uses permitted under the above paragraph, utilizing the Pritzker Stage or the Promenade) as part of the parties' efforts to generate revenues to offset the costs incurred by the Theater in operating the Facility.

The following general terms and conditions shall apply to the City's first twenty-five (25) uses, and the Theater's eight (8) uses, under this Exhibit C with respect to the applicable premises:

- (1) no rent shall be charged for the use of such premises;
- (2) the using party shall be solely responsible for stage hand labor, piano tuning, program printing, and similar similar event-related third-party and production costs attributable to such party's use of such premises;
- (3) the party making such premises available shall be entitled to recover from the using party any costs (other than rent) that, under such first party's then standard rental agreement are not covered expenses and that would be recoverable from any other third party user of the space, but shall not be entitled to recover customarily covered expenses. The parties acknowledge and agree that presently, the Theater's standard rental agreement includes security and custodial services, while the City's standard rental agreement does not, and that each party shall have the right to hereafter modify the terms of its standard rental agreement;
- (4) all uses shall be subject to any generally applicable public laws, regulations and requirements, and to any donor or grant agreements or requirements applicable to premises.

GROUND LEASE

between

City of Chicago, Illinois,
as Landlord,

and

Chicago Music and Dance Theater,
as Tenant

DATED AS OF FEBRUARY 1, 2002

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GROUND LEASE

THIS GROUND LEASE (the "Lease") is made as of the 1st day of February, 2002, between the City of Chicago, an Illinois home rule municipality ("City"), and Chicago Music and Dance Theater ("Theater"), an Illinois not-for-profit corporation doing business as Music and Dance Theater Chicago

RECITALS:

A. City has proposed the construction of a project known as the Chicago Lakefront Millennium Project ("Millennium Project") consisting of an outdoor music venue, an ice skating rink, gardens, fountains, a two lane access road and various improvements.

B. On November 12, 1998, City entered into a Settlement Agreement with the Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation (jointly known as Metra), which authorized City to span over the railroad yard known as the Randolph Street Station and Yard for purposes of the developing, using and maintaining the Millennium Project.

C. In connection with the development of the Millennium Project, Theater and City desire to construct, operate, use and maintain on the Facility Site (as hereinafter defined) a substantially below-grade theater facility including a 1500-seat auditorium, back stage facilities such as rehearsal space, dressing rooms, administrative offices, storage facilities, lobby and entrance spaces and the Equipment (as hereinafter defined) and appurtenances necessary to support all of the foregoing (collectively, referred to hereinafter as the "Facility").

D. It is contemplated that within the Facility, there shall be portions that are used exclusively by the City (defined below as the "City's Exclusive Elements"), portions that are used exclusively by the Theater (defined below as the "Theater's Exclusive Elements"), portions that are to be used by both parties in common throughout the year (defined below as the "Common Elements") and portions which are to be used during certain months by the Theater exclusively and during certain other months by the City exclusively (defined below as "the Seasonal Elements"). Exhibit "C" attached hereto contains a depiction showing the designations of the City's Exclusive Elements, the Theater's Exclusive Elements, the Common Elements and the Seasonal Elements.

E. The Facility is to be designed and constructed substantially below grade so that above the Facility, earthwork, landscaping and improvements can be installed by the City pursuant to the Millennium Project, the use and occupancy of which shall be considered to be a public park.

F. On June 9, 1999, the City Council of the City of Chicago approved an ordinance amending Institutional/Transportation Planned Development No. 677, which authorized the addition of the Facility to the Millennium Project.

G. City is the owner of the real estate that is and will be used and occupied by the Millennium Project (hereinafter defined as "Millennium Project Property"), including that described on Exhibit "A" attached hereto, which will be used and occupied by the Facility (hereinafter defined as "Facility Site").

H. City and Theater understand the necessity to undertake their respective activities in a reasonable manner as will permit and allow the coordinated development, use and operation of the Millennium Project by City and the Facility by Theater and City.

I. The Board of Directors of Theater has approved and authorized the execution of this Lease by resolution adopted January 10, 2002.

J. The City Council of the City of Chicago has approved and authorized the execution of this Lease by ordinance approved February 16, 2000 (Journal of Proceedings, pp. 25682 -25690).

Now, therefore, in consideration of the foregoing Recitals and for other good and valuable consideration the adequacy and receipt of which is hereby acknowledged, City and Theater agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

The terms defined in this Article 1, for all purposes of this Lease, shall have the following meanings:

1.1 "Adjustment Date" shall mean the first day of the Term and each January 1 thereafter falling within the Term.

1.2 "Adjustment Year" shall mean each calendar year during which an Adjustment Date falls.

1.3 "Affiliate of Theater" shall mean any Person controlled by, under common control with or controlling Theater.

1.4 "Alterations" shall have the meaning provided in Section 13.1.

1.5 "Bandshell" shall have the meaning provided in Section 2.3(b)(ii).

1.6 "Base Rent" shall have the meaning provided in Section 3.1.

1.7 "CDOT" means the Department of Transportation of the City of Chicago or its successor agency.

1.8 "Capital Improvements" shall mean maintenance, repair, replacement or reconstruction of the Facility or Equipment, or any part of them, that are needed to keep them in good repair and safe for their intended use as provided in this Agreement, or as subsequently agreed in writing by the Theater and City, but which do not constitute Expenses.

1.9 "Certificate of Occupancy" shall mean a certificate of occupancy (temporary or permanent) or other similar certificate issued by the appropriate governmental department or agency of the City (hereinafter defined).

1.10 "Change Order" means a directive issued or to be issued by or on behalf of Theater or the City to its respective Contractor directing any change in the Work or schedule for completion of Work set forth in such Contract.

1.11 "City" shall mean the City of Chicago, an Illinois municipal corporation.

1.12 "City Event of Default" shall have the meaning provided in Section 24.11.

1.13 "City Facilities" shall mean the facilities, improvements and equipment that are owned or controlled by City, but shall not include any of City's Improvements.

1.14 "City Indemnified Party" shall have the meaning provided in Section 19.1.

1.15 "City's Architect" shall mean the architect designated by City by written notice to Theater.

1.16 "City's Exclusive Elements" shall mean those portions of the Facility as depicted in Exhibit "C" which the City is entitled to enjoy exclusive possession and use, and any City-owned Equipment related thereto ("City Equipment")

1.17 "City's Improvements" shall mean the facilities, improvements and equipment which are to be constructed or installed by City pursuant to the Final Site Plans, Specifications and Work Plan attached hereto as Exhibit "F", including the Connectional Elements.

1.18 "City's Premises" shall mean the Seasonal Elements and the Common Elements (to the extent of City's right to use the Seasonal Elements and Common Elements as provided in this Lease), and City's Exclusive Elements.

1.19 "City's Proportionate Share" shall mean the City's percentage of Expenses determined according to Section 2.6 of this Lease, except that with respect to Capital Improvements, it shall mean the City's percentage thereof as determined in accordance with Section 2.12 of this Lease.

1.20 "City's Season" shall have the meaning provided in Section 2.1.

1.21 "City's Work" shall mean the Work necessary or appropriate to complete the City's Improvements in accordance with the Final Site Plans, Specifications and Work Plan.

1.22 "Claim" shall have the meaning provided in Section 28.1(a).

1.23 "Commencement Date" shall mean the date of commencement of the Term (hereinafter defined) as set forth in Section 2.0.

1.24 "Common Elements" shall mean those elements of the Facility that serve any two of these three: Theater's Exclusive Elements, the City's Exclusive Elements, and the Seasonal Elements, and are specially identified in Exhibit "C".

1.25 "Connectional Elements" shall mean those items of work to be performed by the City which are designed to provide points of connection or access between the Facility and portions of or improvements to the Millennium Project that are not the Facility or the Facility Site. The Connectional Elements are specifically identified in Exhibit "F".

1.26 "Construction Manager" shall have the meaning specified in Article 5.

1.27 "Contract" means generally those documents defining components of the Work to be performed by a Contractor and the terms and conditions under which such Work will be performed, including the General Contract.

1.28 "Contractor" means any person or business organization retained to provide or actually providing Work for the construction and installation of the Facility or the performance of any obligation under this Lease, pursuant to an agreement held by the either Theater or the City. The term includes the General Contractor or Construction Manager and all subcontractors of any tier.

1.29 "Day" or "Business Day" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the City, State of Illinois or the United States government.

1.30 "Default" shall mean any condition or event which constitutes or, after the giving of notice or the passage of any cure period permitted by this Lease, or both, would constitute an Event of Default (hereinafter defined).

1.31 "Easement Areas" shall have the meaning provided in Section 2.14 and are legally described in Exhibit "B".

1.32 "Environmental Law" shall have the meaning provided in Section 28.1(b).

1.33 "Environmental Requirements" means all Requirements pertaining to environmental matters, including those pertaining to **Hazardous Materials** (as defined herein).

1.34 "Environmental Response" shall have the meaning provided in Section 28.1(f).

1.35 "Equipment" shall mean any and all fixtures, equipment and machinery of every kind and nature whatsoever now or hereafter affixed or attached to the Facility, or now or hereafter used or procured for use by Theater in connection with the operation, use or occupancy thereof, and the appurtenances thereof, including all trade fixtures reasonably necessary for or appropriate to the operation of a performing arts center, but excluding removable articles of personal property title to which is vested in Theater under this Lease or in Contractors engaged in the Work or in maintaining the Premises.

1.36 "Event of Default" shall have the meaning provided in Section 24.1.

1.37 "Expense Statement" shall have the meaning provided in Section 2.7.

1.38 "Expenses" shall mean and include those costs and expenses reasonably paid or incurred by or on behalf of Theater for managing, operating, maintaining and repairing the Premises and the Equipment, except to the extent limited by this Section. Such costs and expenses shall include, except to the extent limited by this Section, the cost of security and security devices and systems; snow, ice and trash removal; cleaning and sweeping; maintenance, repair and replacement of utility systems, elevators and escalators; electricity, steam, water, sewer, fuel, heating, lighting and air conditioning; window cleaning; janitorial service; insurance (subject to City's reasonable approval of coverages and limits), including, but not limited to, fire, extended coverage, all risk, liability, workmen's compensation, elevator and any other insurance required to be carried by Theater under this Lease and applicable to the Premises or Equipment; painting; uniforms; management fees (provided that such contract has been approved by the City, which approval shall not be unreasonably withheld), supplies; sundries; sales or use taxes on supplies and services; wages and salaries of all persons engaged in the operation, management, maintenance or repair of the Premises, and so-called fringe benefits, including unemployment insurance taxes, cost for providing coverage for disability benefits, cost of any pensions, hospitalization, welfare or retirement plans, and any other similar expenses incurred under the provisions of any collective bargaining agreement, or any other cost or expense which Theater pays or incurs to provide benefits for employees so engaged in the operation, management, maintenance or repair of the Premises; the charges of any independent contractor who, under contract with Theater or its representatives, does any of the work of operating, managing, maintaining or repairing the Premises; legal and accounting expenses; and any other expense or charge, whether or not hereinbefore mentioned, which, in accordance with generally accepted accounting and management principles, would be considered an expense of owning, managing, operating, maintaining or repairing the Premises, except as hereinafter provided. Expenses shall not include any cost of property, plant and equipment that is not chargeable to expense as incurred under generally accepted accounting principles, including those set forth in Statements, Pronouncements and other publications of the Financial Accounting Standards Board

or the American Institute of Certified Public Accountants now existing or later adopted ("GAAP") and shall not include any cost that should be capitalized under GAAP. Expenses shall not include costs of alterations of the Theater's Exclusive Elements or alterations to the City's Exclusive Elements, or, to the extent not approved by both City and Theater, alterations to any other portion of the Facility or Equipment. Expenses shall not include depreciation charges, interest and principal payments on mortgages, ground rental payments, any expenditures for services which are not available generally to City and Theater, and any expenditures for which Theater has been reimbursed (other than pursuant to this Article).

Expenses include the cost of any item that otherwise would be a Capital Improvement to the Premises except that it is required under governmental laws, regulations or ordinances which were not applicable to the Premises at the time it was constructed. Such costs shall constitute Expenses in an amount reflecting an amortization schedule over such reasonable period as Theater and City shall determine in good faith, together with interest on the unamortized cost of any such improvement at the actual loan rate incurred by Theater. If any item of Expenses, although paid or incurred in one year, relates to more than one calendar year, such item may, at the option of Theater, be allocated proportionately among such related calendar years. Expenses shall not include the cost of advertising or marketing the use of the Facility or any performance therein, nor any expenses related to any preparation for, presentation of or termination of any performance.

1.39 "Expiration Date" shall mean the date of the expiration or the earlier termination of the Term as provided in this Lease.

1.40 "Facility" shall have the meaning set forth in Recital paragraph C, above, and any and all alterations and replacements to the Facility, additions thereto and substitutions therefor. The Facility consists of the City's Exclusive Elements, Theater's Exclusive Elements, the Common Elements and the Seasonal Elements. The Facility does not include the Connectional Elements.

1.41 "Facility Site" shall mean the parcel of real estate legally described on Exhibit "A" attached hereto and made a part hereof.

1.42 "Final Completion of the Work" means such date when all the Work has been completed.

1.43 "Final Plans, Specifications and Work Plan" means those materials which have been prepared by Theater and which have been approved by City under Section 5.5 of this Lease, and are attached and incorporated as Exhibit "J".

1.44 "Final Site Plans, Specifications and Work Plan" means those materials that have been prepared by City and which have been approved by Theater under Section 5.4 of this Lease and which are attached as Exhibit "F". Such materials specify the Connectional Elements.

1.45 "General Contract" means that agreement between Theater and the General Contractor or Construction Manager, as the case may be, which shall be utilized by Theater for the performance of the Theater's Work.

1.46 "General Contractor" means a Contractor or any successor entity acting as general contractor for Theater with respect to the Facility, Theater's Work or any portion of it.

1.47 "Governmental Authority (Authorities)" shall mean the United States of America, the State of Illinois, County of Cook and the City, and any agency, authority, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

1.48 "Hazardous Materials" shall have the meaning provided in Section 28.1(c).

1.49 "Impositions" shall have the meaning provided in Section 4.1.

1.50 "Insurance Policies" shall mean any and all insurance policies which Theater or the City (if any), respectively, are required to keep and maintain pursuant to this Lease.

1.51 "Lease" shall mean this Ground Lease, including all amendments, modifications and revisions, and all exhibits attached hereto, including the Final Plans, Specifications and Work Plan as incorporated by this Lease.

1.52 "Lease Year" shall mean each consecutive twelve (12) month period during the Term, the first Lease Year commencing on the Commencement Date and expiring at midnight of the day preceding the first anniversary of the Commencement Date, and each successive consecutive twelve (12) month period thereafter.

1.53 "Leasehold Mortgage" shall mean a mortgage or deed of trust, including, without limitation, any modification, amendment, spreader, consolidation or renewal thereof, which constitutes a lien on Theater's interest in this Lease and the leasehold interest created hereby, as permitted under Article 10 of this Lease.

1.54 "Leasehold Mortgagee" shall mean the mortgagee or grantee under a Leasehold Mortgage, including any and all successors and assigns.

1.55 "Liability Insurance" shall have the meaning provided in Section 7.1.

1.56 "Manage Hazardous Materials" shall have the meaning provided in Section 28.1(d).

1.57 "Millennium Project Property" means the real property generally bounded by the west line of Columbus Drive, the south line of Monroe Street, the east line of Michigan Avenue and the south line of Randolph Street.

1.58 "Non-Cureable Defaults" shall have the meaning provided in Section 10.18.

1.59 "Notice" shall have the meaning provided in Section 25.1.

1.60 "Park Facilities" shall mean all improvements of any type or nature whatsoever constructed by the City on or above the Roof Structure of the Facility in accordance with Section 2.4(a) of this Lease.

1.61 "Permitted Exceptions" shall have the meaning provided in Section 39.3.

1.62 "Person" shall mean and include an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, limited liability company, or any federal, state, county or municipal government or any bureau, department, authority or agency thereof.

1.63 "Personal Defaults" shall have the meaning provided in Section 10.18.

1.64 "Premises" shall mean the Facility Site and the Facility.

1.65 "Prime Rate" shall mean the annual rate of interest publically announced from time to time by Bank One as its corporate base rate of interest.

1.66 "Project Closeout" means the last date on which all of the following events have occurred: the certification by the General Contractor or Construction Manager of the completion of a Contractor's Work in accordance with the Final Plans, Specifications and Work Plan; final inspections, punchlist completion, and operations systems and equipment started up and tested; the issuance of occupancy certifications; and close-out of all Contracts.

1.67 "Project Schedule" means the plan for the completion of the Facility set forth in Exhibit" E" which is attached to and incorporated in this Lease, as it may be amended by agreement of the parties.

1.68 "Purchasing Agent" means the Chief Procurement Officer of the Department of Procurement Services of the City of Chicago or his or her successor.

1.69 "Release of Hazardous Materials" shall have the meaning provided in Section 28.1(e).

1.70 "Rental" shall mean the Base Rent and all other monetary obligations of Theater to City under this Lease.

1.71 "Repairs" shall have the meaning provided in Section 12.1.

1.72 "Requirements" shall have the meaning provided in Section 14.1.

1.73 "Restoration" shall mean repairs, alterations, restorations, replacements and rebuilding of the Facility, necessary to cause it to be in the same condition as of the date of Final Completion, reasonable wear and tear excepted, or such lesser condition as this Lease may require.

1.74 "Restore" shall mean to perform Restoration.

1.75 "Risk Manager" means the chief executive of the Benefits and Risk Management Office in the Department of Finance of the City or his or her successor.

1.76 "Roof Structure" shall mean the roof of the Facility which is to be constructed by the Theater in accordance with Exhibit "O" and in accordance with the Final Plans, Specifications and Work Plan.

1.77 "Seasonal Elements" shall mean those portions of the Facility and Equipment other than the Common Elements, the Theater's Exclusive Elements and the City's Exclusive Elements, the use of which is reserved for the Theater during Theater's Season and City during the City's Season. The Seasonal Elements are specifically outlined on Exhibit "C" attached hereto.

1.78 "Significant Portion" shall have the meaning provided in Section 9.1(g).

1.79 "Subleases" shall have the meaning provided in Section 10.4.

1.80 "Substantial Completion" shall mean the date upon which the City (or the applicable agency thereof) issues a permanent Certificate of Occupancy for the shell and core of the Facility.

1.81 "Subtenants" shall have the meaning provided in Section 10.4.

1.82 "Term" shall mean the term of this Lease as set forth in Article 2 hereof.

1.83 "Theater" shall mean Chicago Music and Dance Theater, an Illinois not-for-profit corporation d/b/a Music and Dance Theater Chicago, provided, however, that whenever this Lease and the leasehold estate hereby created shall be assigned or transferred in accordance with the terms of and in the manner specifically permitted by this Lease, then, from and after the date of such assignment or transfer and until the next permitted assignment or transfer, the term "Theater" shall mean the permitted assignee or transferee, except that the assignor shall continue to remain jointly and severally liable together with the assignee or transferee with respect to any obligations or liabilities of Theater hereunder which arose or accrued prior to the date of such assignment.

1.84 "Theater Indemnified Party" shall have the meaning provided in Section 19.4.

1.85 "Theater's Exclusive Elements" shall mean the Facility less the Seasonal Elements, the City's Exclusive Elements and the Common Elements, as depicted in Exhibit "C" attached hereto.

1.86 "Theater's Premises" shall mean the Seasonal Elements and the Common Elements (to the extent of Theater's right to use the Seasonal Elements and Common Elements as provided in this Lease), and Theater's Exclusive Elements.

1.87 "Theater's Proportionate Share" shall mean the Theater's percentage of Expenses determined according to Section 2.6, except that with respect to Capital Improvements, Theater's Proportionate Share shall mean the Theater's percentage thereof determined according to Section 2.12 of this Lease.

1.88 "Theater's Season" shall have the meaning set forth in Section 2.1.

1.89 "Theater's Work" shall mean the Work to be performed by Theater in accordance with Article 5 of this Lease.

1.90 "Title Report" shall have the meaning specified in Section 39.1.

1.91 "Unavoidable Delays" shall have the meaning specified in Section 6.1.

1.92 "Work" means the furnishing by Theater, City or their respective Contractors of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Facility and the carrying out of all the duties and obligations under the terms and conditions of the Contracts between Theater or City and their respective Contractors. "Work" shall mean City's Work and Theater's Work as the context shall indicate.

1.93 "Zoning Laws" shall mean the zoning laws of City, as the same may be amended from time to time.

ARTICLE 2

PREMISES AND TERM OF LEASE

2.0 Demise. City does hereby demise and lease to Theater, and Theater does hereby lease, hire and take from City, the Facility Site as improved in accordance with the Final Site Plans, Specifications and Work Plan, subject to the Permitted Exceptions and subject to the terms and conditions of this Lease;

TO HAVE AND TO HOLD unto Theater, its successors and assigns, for a term of ninety-nine (99) years (the "Term") commencing February 1, 2002 (the "Commencement Date") and expiring on the day immediately preceding the one hundredth (100th) anniversary of the Commencement Date or on such earlier or later date upon which this Lease may be terminated as hereinafter provided (the "Expiration Date").

2.1 Statement of Intentions. It is the intention of City and Theater (i) that this Lease govern the relationship between City and Theater pursuant to which Theater will have primary use of the Seasonal Elements for the period of September through May of each calendar year (the "Theater's Season"), and the City will have primary use of the Seasonal Elements for the period of June 1 through August 31 of each calendar year (the "City's Season"); (ii) that all Expenses (as hereinafter defined) of operating the Facility be shared approximately on a pro rata basis (75% for Theater; 25% for City) as set forth in Section 2.6, below; (iii) that Theater, due to its expertise in management of Theater facilities, have day-to-day management control and responsibilities for the overall Facility; (iv) that the terms of this Lease govern the use of the respective portions of the Facility by the parties; and (v) that the provisions of this Lease govern the means and methods of implementing the intentions of City and Theater as expressed in paragraphs (i) - (iv), above.

2.2 City's Possession of Facility, Including City's Exclusive Elements. a. Subject to the provisions of this Lease, Theater shall construct the Facility, including City's Exclusive Elements, as part of Theater's Work in accordance with the provisions of Article 5 of this Lease. No promise of Theater to alter, remodel or improve the Facility, including City's Exclusive Elements, except as expressly provided in this Lease, and no representation regarding the condition or suitability of the Facility, including City's Exclusive Elements for City's intended purposes, have been made by Theater to City that are not expressly set forth in this Lease. The terms and conditions pursuant to which City shall use the Facility, including City's Exclusive Elements are set forth below.

b. Theater does hereby demise and sub-lease to City, and City does hereby sublease, hire and take from Theater during the Term of this Lease (i) the City's Exclusive Elements; (ii) the Seasonal Elements during the City's Season; and (iii) in common with Theater, the Common Elements, all in the manner provided in this Lease.

2.3 Use; Nature of Relationship.

a. Upon issuance of the applicable Certificate of Occupancy, City shall have the right (i) to exclusively use the City's Exclusive Elements (and shall have reasonable access thereto); (ii) during the City's Season, to use exclusively the Seasonal Elements, all in accordance with the terms of this Lease; and (iii) in connection with (i) and (ii) above, use the Common Elements jointly with the Theater. All rights of City hereunder are subject to the terms, conditions and provisions of this Lease, and City hereby assumes and agrees to perform faithfully and be bound by all of the terms of this Lease. Without limitation of the foregoing:

(i) City shall not make any changes, alterations or additions in or to the Facility except as otherwise expressly permitted City under the terms of this Lease;

(ii) City shall not do anything or suffer or permit anything to be done which is inconsistent with or which could have a material adverse impact on Theater's use of the Facility as provided in this Lease, and City shall comply with the covenants described in Section 4.3 of this Lease and with the reasonable scheduling requirements of Theater's

management of the Facility under this Lease, including but not limited to scheduling of use of the Common Elements.

(iii) Except to the extent contemplated by Section 2.1(iii) and 2.12, City shall, at City's expense, keep the City's Exclusive Elements and, during City's use of the Seasonal Elements, the Seasonal Elements, in a clean, sightly and healthy condition and repair, and shall yield the same back to Theater (with respect to the Seasonal Elements) at the end of City's Season each Lease Year in the same condition as they were in at the beginning of City's Season for that Lease Year, ordinary wear and tear excepted. If City shall fail to comply with the terms and conditions of this section (iii), Theater may do so, and the cost of compliance shall be payable by City to Theater promptly upon demand. City shall not cause or permit any waste, misuse or neglect of the Premises or the Equipment.

b. Notwithstanding anything contained in this Lease that may appear to be to the contrary, but subject in any event to the provisions of Article 4.3, below, City and Theater hereby agree as follows:

(i) City shall not assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of its interest in the Facility Site or the portions of the Millennium Project Property subject to this Lease, or its interest in this Lease or in City's Exclusive Elements, by operation of law or otherwise, unless expressly subject to this Lease, including (x) subleases for the City's Exclusive Elements and agreements for the use of the Common Elements in connection therewith (to the extent of City's right to use the Common Elements) (subject to the approval of the Theater, not to be unreasonably withheld) and (y) subleases or booking arrangements for the Seasonal Elements during City's Season for use as an auditorium on terms acceptable to City and consistent with the terms of this Lease; provided, however, that the subleases, agreements and booking arrangements described in (x) and (y), above, shall not constitute an unpermitted transfer or assignment under this section, provided Theater is given reasonable prior written notice of such arrangements or transfer; and

(ii) City shall not permit the City's Exclusive Elements to be used for any purpose except for offices, storage, rehearsal and related purposes necessary and ancillary to City's programming of the Seasonal Elements, or for purposes ancillary to the management of the Millennium Project, or to performances in the Facility or Bandshell adjacent to the Premises in the Millennium Project. City shall not allow the Seasonal Elements to be used for any purpose not permitted Theater under Article 23 of this Lease.

2.4 Roof Structure.

a. When the following components of the Roof Structure are certified in writing (the "Roof Structure Certificate") by Theater's Contractor as being complete as follows: the structure and concrete deck are in place, the water-proofing membrane has been installed and tested, the

protection board is in place with all roof penetrations completed, and all flashing has been installed, all in accordance with Exhibit "O" attached hereto, City shall be entitled to enter upon the Roof Structure and commence construction of the Park Facilities. Theater agrees to cause Theater's Contractor to issue the Roof Structure Certificate upon completion of such items. Upon issuance of the Roof Structure Certificate, Theater shall be deemed to have released from its leasehold under this Lease all rights in the air rights of the Facility Site lying above the top of Roof Structure, and after such date all such air rights shall not be included in the Facility Site; provided, however, that Theater's leasehold interest as defined in this Lease shall include, and City hereby grants and conveys to Theater, an appurtenant easement in the air rights and those portions of the Millennium Project Property adjacent to the air rights as such are reasonably required for ingress and egress for the inspection, replacement, repair and maintenance of the Facility as required or permitted in this Lease. Theater shall not materially alter or remove any portion of the City Facilities, including the Park Facilities and the Millennium Project, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Theater hereby agrees that it will use commercially reasonable efforts to minimize any disruption to the City's operations caused by taking the actions contemplated by this Section 2.4. All maintenance, repairs or replacements performed under this Section 2.4 shall be done lien-free and in a good and workmanlike manner consistent with the Final Plans, Specifications and Work and in accordance with Law. City agrees that it (i) will maintain its improvements above the Roof Structure in a manner that will not cause the Roof Structure to leak, and (ii) will not overload the Roof Structure beyond the specifications stated in Exhibit "O".

b. Upon issuance of the Roof Structure Certificate, any portion of the Facility providing support for the Roof Structure or the Park Facilities (collectively, "Roof Supports") shall be deemed Common Elements for that purpose, and the City shall be authorized to use the Roof Supports at all times for support of the Roof Structure and the Park Facilities. The inspection, maintenance, repair and replacement of the Roof Supports shall be provided and paid for as this Lease provides for other Common Elements.

2.5 Management of Facility.

a. Upon Project Closeout, Theater shall provide or cause to be provided on a regular and as needed basis, the following services for the Facility, which will be known as "Management Services:"

(i) inspection, maintenance, repair and replacement (but not to the extent that constitutes a Capital Improvement) of all structural components and all fixtures, utilities and Equipment of the Facility, including all trade fixtures, ventilation, heating, air conditioning, electrical, communication, data, video and audio equipment, lighting, plumbing and fixtures, water, sewer, elevators, escalators, windows, doors, weatherproofing, fire alarm and protection facilities, ceiling, wall and floor surfaces, seating, vending facilities, all stage, curtain, fly, backstage, rehearsal and performance facilities, kitchens, bathroom and lavatory facilities;

- (ii) snow, ice and trash removal;
- (iii) security services with appropriate personnel and equipment;
- (iv) management of delivery and loading dock operations and scheduling of other common uses and elements to the extent reasonably necessary to avoid conflicts between or materially adverse impacts upon uses of the Facility permitted by this Lease;
- (v) general janitorial service of all portions of the Facility, including the City's Exclusive Elements, including sweeping, cleaning, dusting, ceiling, floor, wall and window washing;
- (vi) financial management of all such matters, including obtaining insurance for Seasonal Elements and Common Elements, and timely payment of all Expenses other than City's Allocated Expenses;
- (vii) purchasing of and timely payment for all supplies and materials necessary for the maintenance and operation of the Facility; and
- (viii) conducting any other item of repair or maintenance which Theater shall reasonably deem necessary and advisable.

b. Theater shall perform or cause the performance of all Management Services in a good and workmanlike manner consistent with the practices of other first class theater facilities in the Central Business District of the City.

c. The performance of Management Services shall be an independent covenant and shall not be conditioned upon City's performance of any obligation under this Lease, but nothing herein shall be deemed to relieve City of the obligation to pay its Proportionate Share of Expenses as set forth in Section 2.6, below.

d. All reasonable costs incurred by Theater in providing Management Services to the Facility shall constitute Expenses.

2.6 Payment of Expenses. City agrees and acknowledges that Theater has made no representation, warranty or guaranty relating to the amount of Expenses. City has had an opportunity to consult with Theater with respect to the Expenses projected for the operation of the Premises but has not relied upon any statements or representations of Theater or of any agent or affiliate of Theater in regard thereto in executing this Lease and in agreeing to perform the terms and covenants hereof and shall make no claim against Theater based thereon. City shall pay City's Proportionate Share of Expenses and Theater shall pay Theater's Proportionate Share of Expenses determined as hereinafter set forth.

a. For those Expenses for which it is practical to do so, such Expenses shall be separately metered or otherwise allocated by Theater between City and Theater based on actual usage of the Facility ("Allocated Expenses"). By way of example and not as a limitation, all separately metered utility costs incurred during City's Season for the Seasonal Elements shall be paid for by City upon presentation of actual bills or invoices therefor by Theater, and all such costs applicable to the City's Exclusive Elements shall likewise be paid by City as Allocated Expenses. Likewise, all separately metered utility costs incurred during Theater's Season for the Seasonal Elements, and all such costs applicable to Theater's Exclusive Elements, shall be paid by Theater as Allocated Expenses.

b. For those Expenses that cannot be reasonably allocated based on actual usage of the Facility ("Proportional Expenses"), such as general commercial liability insurance for the Facility, the City shall pay 25% of such Proportional Expense ("City's Proportionate Share") not less than five business days prior to the date such Proportional Expense must be paid to avoid interest, penalty or forfeiture. All other Proportional Expenses shall be the Theater's obligation ("Theater's Proportionate Share").

c. The City's obligation to pay its portion of any Proportional Expense for any Adjustment Year shall be conditioned upon the approval of a Budget for such Adjustment Year, which approval shall not be unreasonably withheld or delayed. As of the Commencement Date, the Expenses for the first Adjustment Year cannot be ascertained with accuracy. However, as soon as is reasonably practical prior to Final Completion of the Work, and not less than 90 days prior to each subsequent Adjustment Date, the Theater shall submit to the City for its approval a proposed Budget for the Adjustment Year, which shall provide (i) an operations plan which describes the nature and extent to which each of the services and facilities giving rise to Expenses will be provided, (ii) Theater's reasonable estimates, forecasts and projections of Allocated Expenses and Proportional Expenses ("Projections"), and (iii) a schedule for the City's payment of such Expenses. Such schedule shall provide for the City's payment not less than five business days prior to the date such Expenses must be paid to avoid interest, penalty or forfeiture. City agrees that it will not unreasonably withhold or deny approval of a Budget proposed by Theater for any Adjustment Year. Upon approval by the City, the Budget, including any approved revisions to it, will provide prima facie evidence of the amount of Proportional Expenses that the City is obligated to pay. From time to time during the Adjustment Year, the Theater may submit to the City for its approval a proposed revision to the Budget. The City agrees to act reasonably in determining whether to approve a proposed Budget or a proposed revision to the Budget. The Theater and the City agree to meet in a timely fashion and negotiate in good faith to resolve their differences concerning the Budget or any revision to it. Until such time as Theater and City have agreed on the budget for any Adjustment Year, the budget for such Adjustment Year shall be deemed to be the same as the budget for the prior Adjustment Year, increased by a factor equal to the increase in the Consumer Price Index for all Urban Consumers (CPI-U) for the Chicago - Gary - Kenosha, IL, IN, WI, 1996 = 100.

2.7 Readjustments. Following the end of each Adjustment Year and after Theater has determined the actual amount of Proportional Expenses for such Adjustment Year, but in no event more than 180 days after completion of the Adjustment Year, Theater shall notify City in writing (any such notice hereinafter referred to as "Expense Statement") of such Proportional Expenses and the amount the City owes, or is owed, if any, for such Adjustment Year. If the City owes for such Adjustment Year, then City, within thirty (30) days after the date of Expense Statement, shall pay to Theater such amount. If the City is owed for such Adjustment Year, then Theater within thirty (30) days after delivery of the Expense Statement, shall refund said amount to City. If the amount owed is less than 5% of the City's Proportional Expense, then Theater shall credit such excess to City's Proportionate Share of Expenses next payable after the date of Expense Statement. If this Lease expires or is terminated prior to full application of such excess, Theater shall pay to City the balance thereof.

2.8 Books and Records. For a period of three (3) years following the end of an Adjustment Year, Theater shall maintain books and records showing Expenses in accordance with sound accounting and management practices. City or its representative shall have the right to examine Theater's books and records showing Expenses upon reasonable prior notice and during normal business hours.

2.9 Audit Procedures. Upon written request made within nine months after the end of an Adjustment Year, Theater shall provide the City with an annual audited statement signed by a certified public accountant concerning all Expenses and disbursements by the Theater for the prior Lease Year. The cost of such audit shall be a Proportional Expense.

2.10 Proration and Survival. With respect to any Adjustment Year which does not fall entirely within the Term, City shall be obligated to pay its portion of Proportional Expenses for such Adjustment Year only a pro rata share of Expenses as herein above determined, based upon the number of days of the Term falling within the Adjustment Year. Following expiration or termination of this Lease, Theater shall prepare and deliver to City an Expense Statement within 180 days, and City or Theater shall pay any Expenses due or to be refunded within thirty (30) days of delivery to City. Without limitation of other obligations of City which shall survive the expiration of the Term, the obligation of City to pay or Theater to refund Expenses provided for in this Article accruing during the Term shall survive the expiration or termination of this Lease.

2.11 Off-Season Use. In the event City wishes to use the Seasonal Elements during the Theater's Season, or if Theater wishes to use the Seasonal Elements during the City's Season, each party shall make reasonable efforts to accommodate such uses upon terms reasonably acceptable to the parties. For purposes of this Agreement, any use of the Seasonal Elements by City pursuant to this Section 2.11 shall be deemed to be a use during City's Season, and any such use by Theater during City's Season shall be deemed to be a use during Theater's Season.

2.12 Capital Improvements. City and Theater acknowledge and agree that over the Term of this Lease, Capital Improvements to the Premises will be required. From time to time during the

Term, either City or Theater may propose to the other party that Capital Improvements be made, which proposal will specify in general detail the nature and anticipated cost of the proposed Capital Improvement. City and Theater agree to review such proposal in good faith within 30 days of receipt and to advise the other party whether it agrees with the proposal, which agreement shall not be unreasonably withheld. If Theater and City agree, the party proposing such Capital Improvements shall proceed, in consultation with the other party, to process detailed plans, specifications and cost estimates for the Capital Improvement that is the subject of the proposal, the cost of which plans and specifications shall be deemed to be an Expense. If Theater and City agree, which agreement shall not be unreasonably withheld, as to the projected cost of the Capital Improvement based on the detailed plans and specifications, such Capital Improvement shall be made on terms and conditions reasonably acceptable to City and Theater, and Theater will pay (or reimburse) Theater's Proportionate Share of the cost of such Capital Improvements and City shall pay (or reimburse) City's Proportionate Share of the cost of such Capital Improvements.

2.13 Terrace. City anticipates using the terrace area ("Terrace") shown on Exhibit "P" as a possible outdoor café and seating area. The Terrace is not part of the Premises, but due to its proximity to the Theater's entrance and because of the potential impact of the use of the Terrace on Theater and its acoustics, Theater shall be consulted regularly during the course of determining the plans, terms and provisions pursuant to which the Terrace shall be developed and used, and any sublease or other use arrangement with a restaurateur or other food service or programming provider for the Terrace, and any other use thereof, shall be promptly forwarded to Theater for review and comment. City shall not permit the Terrace to be used for any purpose that would have a materially adverse impact on Theater's use of the Facility.

2.14 Common Support Elements; Soil Retention Facilities

a. The Facility and the City Facilities, including the Millennium Project, each rely in part for structural support on certain caisson bells, caissons and caisson caps that have been constructed by the City as part of the City's Work and which are located partially within the Facility Site and partially within the Easement Areas as described in Exhibit "B" which is attached and incorporated. These structural support items are described and depicted in Exhibit "D" which is attached and incorporated ("Common Support Elements"). Theater's leasehold interest as defined in this Lease shall include the lease of the Common Support Elements in the same manner as Theater holds an interest in caisson bells, caissons and caisson caps located entirely within the Facility Site, and the Common Support Elements shall be deemed to be part of the Facility; provided, however, that the City hereby retains an identical right to the use, maintenance and support of the Common Support Elements for the City Facilities, including the Millennium Project, as provided in this Section 2.14. Theater's leasehold interest shall include, and the City hereby grants and conveys to Theater for the Term, an appurtenant easement in the Easement Areas for the use, maintenance and support of the Common Support Elements in accordance with this Section 2.14.

b. In connection with the completion of the City's Work, the City installed and constructed certain sheet piling and other soil retention facilities which are located within the

Easement Areas and are described and depicted in Exhibit "G" which is attached and incorporated ("Soil Retention Facilities"). The Soil Retention Facilities shall be deemed a part of the Facility. Theater's leasehold interest as defined in this Lease shall include the lease of the Soil Retention Facilities, and City hereby grants and conveys to Theater for the Term an appurtenant easement in the Easement Areas for the use, maintenance and support of the Soil Retention Facilities in accordance with this Section 2.14.

c. In the event that Theater or City reasonably requires maintenance to the Common Support Elements, the City, as owner of the City Facilities, including the Millennium Project, and the Theater, as manager of the Facility, shall share evenly in the actual cost of such maintenance, reasonably incurred by either party for such maintenance. Theater's share of the cost of maintenance of the Common Support Elements, and the cost of maintenance of the Soil Retention Facilities, shall be considered Proportional Expenses subject to partial payment or reimbursement by the City as subtenant of the Facility as provided in this Article. Costs reasonably incurred shall include the cost to restore portions of the Facility or the City Facilities to the extent altered or disturbed by maintenance activities.

d. City shall not materially alter or remove any portion of the Facility without the prior written consent of the Theater, which consent shall not be unreasonably withheld, conditioned or delayed. In its exercise of rights under this Section 2.14, Theater shall not materially alter or remove any portion of the City Facilities, including the Millennium Project, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Each party hereby agrees that it will use commercially reasonable efforts to minimize any disruption to the other party's operations caused by taking the actions contemplated by this Section 2.14. All maintenance, repairs or replacements of the Common Support Elements and the Soil Retention Facilities shall be done lien-free and in a good and workmanlike manner consistent with the Final Plans, Specifications and Work Plan and the Final Site Plans, Specifications and Work Plan (collectively referred to hereinafter as the "Plans"), and in accordance with Law.

2.15 Freight Elevator and Loading Dock.

a. General. The Final Plans, Specifications and Work Plan provide for the installation of a freight elevator and related structures and equipment (collectively, the "Freight Elevator") as generally shown on Exhibit "I-1" attached hereto. Although the Freight Elevator will extend outside the Facility Site, it shall be deemed to be a part of the Facility. The Freight Elevator services both the Facility and the Bandshell, and is integral to the operation of both the Facility and the Bandshell. Exterior access to the Freight Elevator is obtained through the loading dock and access corridor (collectively, the "Freight Access Areas") located in the Facility as generally shown on Exhibit "I-2". The parties understand and acknowledge that coordinated use of the Freight Elevator and the Freight Access Areas is essential to the ongoing operation of the Facility and the Bandshell, and that the completion and use of the Freight Elevator is critical to Theater's operations regardless of the eventual construction and operation of the Bandshell. Theater is to construct and install that portion of the Freight Elevator and Freight Access Areas as shown on the Final Plans,

Specifications and Work Plan, and City is to install that portion of the Freight Elevator as shown on Exhibit "I-3" ("City's Freight Elevator Work"). Theater's leasehold interest as defined in this Lease shall include, and the City hereby grants and conveys to Theater for the Term, an appurtenant easement in the portion of the Millennium Project Property occupied by the Freight Elevator and those portions of the Millennium Project Property adjacent to and reasonably required for the construction, use, maintenance and support of the Freight Elevator in accordance with this Lease and for any and all activities reasonably incident thereto in a manner consistent with the this Lease. In its exercise of rights under this Section 2.15, Theater shall not materially alter or remove any portion of the City Facilities, including the Millennium Project, without the prior written consent of the City which consent shall not be unreasonably withheld, conditioned or delayed. Theater hereby agrees that it will use commercially reasonable efforts to minimize any disruption to the City's operations caused by taking the actions contemplated by this Section 2.15. All maintenance, repairs or replacements of the Freight Elevator shall be done lien-free and in a good and workmanlike manner consistent with the Plans and in accordance with Law.

b. City Use. The Freight Elevator and Freight Access Areas shall be deemed to be Common Elements. During both the City's Season and the Theater's Season, City shall have the right to use the Freight Elevator and Freight Access Areas in common with Theater for purposes ancillary to City's use of the Facility as provided in this Lease and City's use of the Bandshell and for ingress and egress to and from the Bandshell for such purposes. Nothing in this Agreement shall be deemed to limit the right of Theater to lock and secure all doors and means of entry to the Facility at all times, subject to the provisions of this Lease, nor shall anything in this Agreement limit the right of City to secure all doors and means of entry from the Freight Elevator to the Bandshell. To avoid conflicts with usage, any use of the Freight Elevator and Freight Access Areas shall be scheduled in advance with, and subject to the reasonable scheduling practices of, Theater's general manager.

c. Maintenance. In the event that Theater or City reasonably requires maintenance to the Freight Elevator, the City, as owner of the City Facilities, including the Millennium Project, and the Theater, as manager of the Facility, shall share evenly in the actual cost of such maintenance. Theater's share of the cost of maintenance of the Freight Elevator shall be considered a Proportional Expense subject to partial payment or reimbursement by the City as subtenant of the Facility as provided in this Article. Costs reasonably incurred shall include the cost to restore portions of the Facility or the City Facilities to the extent altered or disturbed by maintenance activities.

2.16 Raft Slab. City has constructed as part of City's Work a structural element of the Bandshell commonly known as the "Raft Slab" and which is generally shown on Exhibit "F". The Raft Slab is not in the Facility Site and is not part of the Facility. Theater's leasehold interest as defined in this Lease shall include, and City hereby grants and conveys to Theater for the Term, an appurtenant easement in the Raft Slab and in the portion of the Millennium Project Property occupied by the Raft Slab for attaching, maintaining, replacing and repairing fixtures, coring for conduit, anchors for walls and other ancillary improvements related to the Facility, all as

contemplated by the Final Plans, Specification and Work Plan and in accordance with this Lease. In its exercise of rights under this Section 2.16, Theater shall not materially alter or remove any portion of the City Facilities, including the Millennium Project, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Theater hereby agrees that it will use commercially reasonable efforts to minimize any disruption to the City's operations caused by taking the actions contemplated by this Section 2.16. All maintenance, repairs or replacements of the portions of the Facility attached to the raft slab shall be done lien-free and in a good and workmanlike manner consistent with the Plans and in accordance with Law.

2.17 Encroachment and Insulation Easements.

a. Each party hereby grants and conveys to the other for the Term reciprocal appurtenant easements for minor encroachments between the Millennium Project Property and the Facility Site (which are sometimes referred to hereinafter individually as a "Parcel" and collectively as the "Parcels") for the respective improvements to be constructed thereon which are due to the unintentional placement or settling or shifting of the improvements constructed or altered thereon (in accordance with the terms of the Lease); provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of party or if such encroachment materially interferes with the use of the effected Parcel. Notwithstanding the foregoing, the parties hereby acknowledge that an approximate two-inch physical separation between the Facility and the Millennium Project improvements is necessary to isolate the Facility acoustically from the Millennium Project improvements. City, as current Owner of the Millennium Project Property, hereby grants and conveys to Theater for the Term a Separation Easement (as hereinafter defined) and agrees for so long as the Facility is used primarily for theater purposes, not to construct or cause to be constructed any improvements that encroach in any manner on such two-inch separation ("Separation Easement"), and Theater likewise agrees not to construct or cause to be constructed any improvements that encroach in any manner on the Separation Easement; provided, however, that the parties may maintain flashing, which may be attached at various locations to the improvements located on each Parcel in a manner consistent with the Plans.

b. The Bandshell includes an element commonly referred to as the "shear wall" ("Shear Wall"), which is to be constructed by City in the location and manner shown on Exhibit "F" attached hereto. Certain insulation and related materials (collectively, "Insulation") is needed by Theater to maintain acoustic and thermal separation from the Bandshell, and the Insulation would be most efficiently and effectively applied by Theater to the north side of the Shear Wall. Theater's leasehold interest as defined in this Lease shall include, and City hereby grants and conveys to Theater for the Term, an appurtenant easement over, upon and across the Shear Wall and in the portion of the Millennium Project Property occupied by the Shear Wall for attaching, maintaining, replacing and repairing the Insulation, all as contemplated by the Final Plans, Specification and Work Plan in accordance with this Lease. In its exercise of rights under this Section 2.17, Theater shall not materially alter or remove any portion of the City Facilities, including the Millennium Project, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Theater hereby agrees that it will use commercially reasonable

efforts to minimize any disruption to the City's operations caused by taking the actions contemplated by this Section 2.17. All maintenance, repairs or replacements of the Insulation shall be done lien-free and in a good and workmanlike manner consistent with the Final Plans, Specifications and Work Plan and in accordance with Law.

2.18 Temporary Construction Easement To the extent necessary to efficiently accomplish the Work to be completed pursuant to the Final Plans, Specifications and Work Plan, City hereby grants and conveys to Theater a temporary construction easement in and through the Millennium Project Property for the purposes of constructing and installing portions of the Facility as contemplated by the Final Plans, Specification and Work Plan, which easement shall terminate upon the Substantial Completion of the Facility. Such easement shall include and incorporate all terms of the coordination agreed under Section 5.8(f).

2.19 Recording of memorandum The City and Theater each agree to promptly execute and permit the recording of a memorandum of this Lease or similar document providing notice of the existence and provisions of this Lease, including a summary or verbatim recitation of the language of this Lease, including any easements or other property interests, reasonably requested by the other party, or by a Leasehold Mortgagee.

2.20 Garage Elevator Access.

a. City has constructed a parking garage ("Garage") adjacent to the Facility Site to the east on the real estate legally described on Exhibit "L" attached hereto. City has installed (or will install) a passenger elevator ("Garage Elevator") in the Garage as shown on Exhibit "L-2" attached hereto. The Garage Elevator provides direct access for Theater patrons and others from the Garage to the Facility on the Lower Randolph Street Parterre Level as shown on Exhibit "L-3" attached hereto, and is a valuable amenity to the Facility.

b. In order to facilitate the use of the Garage and the Garage Elevator by persons using the Facility, City hereby establishes in favor of, grants and conveys for the benefit of Theater for use during the Term by Theater and its employees, agents, invitees, subtenants, successors and assigns, as an easement appurtenant to the Facility Site, a non-exclusive easement, for the Term of the Lease and so long as the Garage is open to the public (and subject to interruption for necessary maintenance and repair requirements), for the use of and ingress and egress to and from the Garage Elevator or such other replacement elevator or access that City in its reasonable judgment deems necessary or desirable in substitution therefor and for pedestrian ingress and egress upon, over, through and across the Garage as may be reasonably ancillary to such Garage Elevator use and for the purpose of placing and maintaining informational signage for the Facility within the Garage Elevator and the Garage, which signage shall be subject to the prior approval of City, not to be unreasonably withheld or delayed.

c. Nothing in this Section 2.20 shall be deemed to imply or grant any right in favor of Theater or its patrons to park in the Garage in excess of the rights granted to the general

public to park in the Garage for a fee, nor imply an obligation on the part of Theater to maintain access to the Garage Elevator.

d. City agrees at its sole cost and expense to use commercially reasonable efforts to maintain the Garage Elevator in good working order and condition for so long as the Garage is open to the public, and further agrees not to unreasonably obstruct access from the Garage to the Garage Elevator except as reasonably may be needed in City's judgment for the proper maintenance, repair or replacement of the Garage and the Garage Elevator.

ARTICLE 3

RENT

3.1 Base Rent. Theater shall pay to City, without offset or deduction and without notice or demand, the annual sum of one dollar (\$1.00) (collectively, "Base Rent") payable in advance on the first (1st) day of each Lease Year of the Term (unless any such date is not a Business Day, in which case payment shall be due on the next succeeding Business Day), for the period commencing on the Commencement Date and continuing thereafter throughout the Term. The first installment of Base Rent shall be due and payable on the Commencement Date and shall be paid at the office of City set forth above or at such other place as City shall direct from time to time by written notice to Theater.

ARTICLE 4

IMPOSITIONS

4.1 Payment. Due to the exempt status of City and the not-for-profit status of Theater, it is anticipated that there will be no Impositions (as defined below) assessed or imposed on the Facility, the Facility Site or the Theater's interest therein. Notwithstanding the foregoing, in the event that Impositions are so assessed or imposed, the party that by its operations has caused such Imposition agrees to pay or cause to be paid when due all Impositions that are assessed or imposed, or become due and payable during the Term (or applicable to a period falling within the Term) and which create or may create a lien upon the Facility or the Facility Site, or the interest of City or Theater therein. The term "Impositions" shall mean all federal, state, county, city or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to Theater's leasehold interest in the Facility Site or to Theater's Premises. Each such Imposition, (if any) or installment thereof, during the Term shall be paid before the last day the same may be paid without fine, penalty, interest or additional cost; provided, however, that if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), the party obligated to make the payment under this Section 4.1 (the "Taxpayer") may

exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, provided that all such installment payments relating to periods prior to the date definitely fixed for the expiration of the Term are required to be made prior to the Expiration Date.

4.2 Evidence of Payment. The Taxpayer, from time to time upon written request of Theater or City, shall furnish to the other party, within the earlier of (i) thirty (30) days after the date when an Imposition is due and payable under this Lease, or (ii) thirty (30) days after the date when an official receipt of the appropriate imposing authority is received, such official receipt or, if no such receipt has been received, other evidence reasonably satisfactory to the requesting party evidencing the payment of the Imposition.

4.3 City's Covenant Regarding Tax-Exempt Bonds.

a. City acknowledges that a portion of the Facility may be financed by Theater with the proceeds of bonds, the interest on which is intended to be exempt from federal income tax. In connection therewith, City agrees that it will not enter into any arrangement, written or oral, formal or informal, pursuant to which any person other than City will use any portion of the Facility unless:

(i) such person is a State, a political subdivision, or an instrumentality of either, or

(ii) (A) the term of the use under the arrangement, including all renewal options, is not longer than 30 days; (B) the arrangement is a negotiated arms's length arrangement; and (C) compensation under the arrangement is at fair market value. For purposes of this Section 4.3.a, compensation is at fair market value if such compensation is based on rates that are generally applicable and uniformly applied. Rates may be treated as generally applicable and uniformly applied even when different rates apply to different classes of users so long as such differences in rates are customary and reasonable.

b. In the event that City desires to use or permit the use of the Facility for a proposed use that is not described in Section 4.3.a, above, City may do so if it shall first obtain and provide to Theater at least 60 days prior to the requested use, the written legal opinion ("Opinion") of a nationally recognized bond counsel, which opinion is acceptable to Theater to the effect that such use will not constitute "private business use" within the meaning of Section 141(b)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), or corresponding section of any future federal tax code, of any portion of the Facility that has been financed through the issuance of tax-exempt bonds. If Theater accepts the Opinion, the proposed use will be a permitted use as if it were listed in Section 4.3.a, above. If Theater does not accept the conclusions of the Opinion, then the proposed use shall not be permitted. Provided, however, that within 60 days of a written request by City, Theater shall obtain a review of the Opinion by another nationally-recognized bond counsel reasonably acceptable to City, and shall accept the reasonable conclusions of such counsel

concerning the Opinion. If Theater's counsel agrees with the conclusions of the Opinion, then Theater shall be deemed to have accepted the Opinion. Upon receipt, Theater shall promptly deliver to City a copy of a memorandum, letter or other writing memorializing the results of the Theater's counsel's review.

c. In the event that Theater obtains an Opinion of nationally recognized bond counsel reasonably acceptable to City that there has been a change in law, regulations or administrative interpretation such that a use of the Facility permitted by Section 4.3.a would constitute "private business use" or otherwise adversely affect the tax-exempt status of any outstanding bonds, City agrees that Section 4.3.a shall be amended to reflect such change in accordance with such Opinion.

4.4 Apportionment. Any Imposition imposed against the Premises, relating to a fiscal period of the imposing authority, a part of which period is included within the Term and a part of which is included in a period of time after the date definitely fixed in Article 2 hereof for the expiration of the Term (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be reasonably apportioned between City and Theater as of such date definitely fixed for the expiration of the Term.

4.5 Right to Contest. Theater shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition, provided, however, Theater may postpone paying such Imposition if and only as long as:

a. neither the Premises nor any part thereof would, by reason of such postponement or deferment, be, in the reasonable judgment of City, in danger of being forfeited, lost or adversely affected; and

b. such contest shall not subject City to the risk of any criminal or civil liability.

4.6 Right to Seek Reduction. Theater shall have the right to seek a reduction in the assessed valuation of the Premises for real property tax purposes and to prosecute any action or proceeding in connection therewith. To the extent any real estate taxes are imposed or deemed likely to be imposed upon the Premises or Theater's interest therein, Theater may seek an exemption from such imposition based upon Theater's not-for-profit status or other available grounds. In such event, City will use its reasonable efforts to support Theater's claim for such exemption.

4.7 Cooperation. City shall cooperate in any proceedings referred to in Section 4.5 hereof and Theater shall reimburse City for any and all actual costs or expenses which City may reasonably sustain or incur in connection with any such proceedings.

4.8 Evidence. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting nonpayment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

4.9 Maintenance of Exemption. City hereby authorizes Theater to take all reasonable steps to maintain the exemption of general real estate taxes affecting the Facility Site to the date of delivery of possession of the Premises pursuant to the Lease. After the effective date of this Lease, Theater may advise the Assessor of Cook County, Illinois of this Lease in order to have Theater's Premises separately assessed as a leasehold estate from the Facility Site. The parties shall execute such documents as shall be reasonably necessary or required in order to effect such division. City, as owner of fee simple title to the Facility Site, shall maintain an exemption from *ad valorem* real estate taxes and assessments to which it is entitled relative to the Facility Site, except to the extent such taxes are the result of this Lease or the operation of Theater. Subject to the second sentence of Section 4.1, above, Theater shall be responsible for leasehold real estate taxes, if any, accruing to Theater's Premises after the execution of this Lease. City agrees that it will not engage in or permit any activity in or on the Facility that would subject the Premises to tax under the Illinois Property Tax Code, 35 ILCS 200/1-1, et seq. Theater agrees that it will not engage in or permit any activity in or on the Theater's Premises that would subject the Premises to tax under the Illinois Property Tax Code, 35 ILCS 200/1-1, et seq. Inasmuch as Theater is an Illinois not-for-profit corporation, the parties agree that Theater shall have the right to apply to the appropriate governmental agencies to grant an exemption from leasehold real estate taxes against Theater's leasehold interest in the Premises.

ARTICLE 5

CONSTRUCTION

5.1 General. City and Theater recognize and acknowledge that the construction of City's Improvements, the Facility and their integration into the Millennium Project in a timely and economical fashion will require a high degree of cooperation and coordination between City and Theater and their respective architects, contractors, consultants and employees. Therefore, City and Theater agree to act in good faith with regard to their respective obligations and rights under this Lease in order to effectuate the terms of this Lease and to accomplish the timely and economical performance of all Work necessary to complete the Facility.

5.2 Organization and Coordination.

a. City's Project Manager. City shall appoint a Project Manager ("City's Project Manager") to manage and coordinate City's Work, and shall notify Theater in writing of the name, address, telephone and facsimile numbers of such person, who shall represent City in all matters relating to Theater's Work and City's Work and who shall be the point of receipt for all submittals,

comments, or questions from Theater related thereto. Theater shall direct all communications to City regarding Theater's Work or City's Work to the City's Project Manager.

b. Theater's Project Manager. Theater shall appoint a Project Manager ("Theater's Project Manager") to manage and coordinate Theater's Work with City, and shall notify City in writing of the name, address, telephone and facsimile numbers of such person, who shall represent Theater in all matters relating to Theater's Work and City's Work and who shall be the point of receipt for all submittals, comments or questions from City related thereto. City shall direct all communications to Theater regarding Theater's Work or City's Work to Theater's Project Manager.

c. Procurement and Communication. Theater shall procure the Contractors for Theater's Work on the Facility. City has procured the Contractors for City's Work. All parties involved in the Facility, including City, shall communicate with Theater's Contractors solely through Theater and with City's Contractors solely through City. Theater, City and their respective Contractors must perform all of their Work in coordination with other work performed on or near the Millennium Project Site.

d. Traffic. City and Theater shall agree upon a joint traffic plan providing for the proposed work and the continued operation and maintenance of the facilities of both City and Theater on or adjacent to the Facility Site. The traffic plan shall address both vehicular and pedestrian traffic. The traffic plan shall be sent for review and comment to the Chicago Park District and such other owners of property adjacent to the Facility Site as City shall designate in writing to Theater.

5.3 Records, Audits and Confidentiality.

a. Theater shall deliver, or cause to be delivered to City all documents, data, studies, reports, and instruments of service prepared for or by Theater for Theater's Work, including the Plans, Specifications and Work Plan, promptly upon reasonable demand therefor at any time during the Term of this Lease; upon termination of this Lease; or completion of Theater's Work hereunder.

b. City shall deliver, or cause to be delivered to Theater all documents, data, studies, reports, and instruments of service prepared for or by City for the City Work, including the Site Plans, Specifications and Work Plan, promptly upon reasonable demand therefor at any time during the Term of this Lease; upon termination of this Lease; or completion of City's Work hereunder.

c. All of the reports, information, or data, prepared, assembled or provided by City to Theater or by Theater to City under this Lease are confidential, and Theater and City agree that, except as reasonably required by their respective lenders, auditors and legal counsel, and except as specifically authorized herein or as may be required by law, neither party shall make available said

reports, information, or data, to any other individual or organization, without the prior approval of the party whose reports, information data is sought to be disclosed. In the event a party is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Facility records, data, or documents which may be in the possession of Theater or City or their respective Contractors by reason of this Lease, the party so served shall immediately give notice to the other party (and in the case of City, to the Corporation Counsel for City), with the understanding that the non-served party shall have the opportunity to contest such process by any means available to it before such records or documents are submitted to a court or other third party; provided, however, that neither party shall be obligated to withhold such delivery beyond the time that has been ordered for disclosure by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

d. Theater shall furnish, or cause to be furnished, to City such information as may be requested relative to the progress, execution and cost of the Facility. Theater shall maintain, or cause to be maintained, its books, records, documents, and other evidence, and adopt, or cause to be adopted, accounting procedures and practices sufficient to reflect properly all costs of whatever nature, claimed to have been incurred and anticipated to be incurred for or in connection with the Facility for five (5) years after the Project Closeout. To the extent commercially reasonable, this system of accounting shall be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

e. City shall furnish, or cause to be furnished, to Theater such information as may be requested relative to the progress, execution, and cost of the City Improvements. City shall maintain, or cause to be maintained, its books, records, documents, and other evidence, and adopt, or cause to be adopted, accounting procedures and practices sufficient to reflect properly all costs of whatever nature, claimed to have been incurred and anticipated to be incurred for or in connection with City Improvements for five (5) years after the Project Closeout. To the extent commercially reasonable, this system of accounting shall be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

f. All books and accounts in connection with the Theater's Work, the City's Work or the Facility shall be open to inspection by authorized representatives of the City or Theater, as the case may be, upon prior written request during normal business hours. All such records shall be available, or caused to be made available, at reasonable times during the performance of the Work under this Lease and shall be retained in a safe place and made available for inspection by the City or Theater or their respective authorized representatives for a period of not less than five (5) years after the Project Closeout. No provision in this Lease granting a party a right to access to records and documents is intended to impair, limit, or affect any right of access to such records and documents which a party would have had in the absence of such provisions. Theater and the City further agree to implement such measures as may be necessary to ensure that its staff and Contractors shall be bound by these provisions.

5.4 Design/Engineering of City's Site Work. City's Architect prepared proposed Final Site Plans, Specifications and Work Plan for the City's Work, and has submitted the same to Theater for its approval. Theater has reviewed and approved such proposed Final Site Plans, Specifications and Work Plan and such are described on Exhibit "F" attached hereto and shall constitute the "Final Site Plans, Specifications and Work Plan". The Final Site Plans, Specifications and Work Plan shall be deemed to be a part of this Lease.

5.5 Design/Engineering of Facility.

a. Theater engaged the firm of Hammond Beeby Ruppert Ainge ("Theater's Architect") to prepare final plans and specifications for the Facility, and has caused Theater's Architect to submit the same to City for its approval. City has approved such plans and specifications, which are described on Exhibit "J" attached hereto and which constitute the "Final Plans, Specifications and Work Plan." The Final Plans, Specifications and Work Plan shall be deemed to be a part of this Lease.

b. Theater expressly agrees that the Final Plans, Specifications and Work Plan have been prepared under the direct supervision of Theater, and Theater agrees and warrants that the Final Plans, Specifications and Work Plan are in compliance with (1) the Environmental Barriers Act (410 ILCS 25/1 et seq. (1996)), (2) "The Illinois Accessibility Code", 71 Ill. Adm. Code 400, and (3) all codes and ordinances of City of Chicago and the State of Illinois.

5.6 Compliance with Requirements. Theater shall use, and shall cause each of its officers, employees, agents, and Contractors, to use a degree of care consistent with the generally accepted custom and practice for a construction site when entering upon the Millennium Project Property in connection with the Work. In the case of any property owned or controlled by City, Theater shall comply and shall cause each of its officers, employees, agents and Contractors, to comply with any and all reasonable instructions and requirements for the use of such property, the conditions of any property rights or any licenses for which being hereby incorporated by reference, but only to the extent that it is a matter of public record or Theater receives a written copy thereof in advance. Theater acknowledges receipt of a copy of the City's Settlement Agreement with METRA. Any and all claims, suits, judgments, costs, or expenses, including attorneys' reasonable fees, arising from, by reason of, or in connection with any such entry shall be treated in accordance with the applicable terms and conditions of this Lease, including without limitation the indemnification provisions contained in Section 5.10 of this Lease.

5.7 Construction of City Improvements.

a. Completion of City Work. On or before the Commencement Date, City shall, at City's sole cost and expense, deliver to Theater the Facility Site improved by the City's Improvements (but not including the Connectional Elements) in accordance with the Final Site Plans, Specifications and Work Plan attached hereto as Exhibit "F" and incorporated herein. City

agrees to complete the installation and construction of all Connectional Elements, which are described in Exhibit "F" on or before August 1, 2002

b. Garage Doors. Theater and City acknowledge and agree: (i) that a certain set of pedestrian doors is required to be installed in the City's Garage in order to facilitate access to the Facility from the City's Garage to the Lower Randolph Street Parterre Level as referred to in Section 2.20(a), above, and (ii) that plans and specifications for such doors are not yet available. City and Theater agree to cooperate in good faith in order to assist City in the preparation of plans and specifications for said doors in a manner consistent with the Plans, Specifications and Work Plan and further agree that Theater shall be responsible for the installation of said doors as part of Theater's Work, provided that if the actual costs reasonably incurred by Theater attributable to such doors exceeds \$20,000, City will reimburse Theater for such excess costs within thirty (30) days after written request therefor (accompanied by invoices or other evidence of cost reasonably acceptable to City). City shall pay for all actual costs incurred in the redesign of the Garage Elevator core reasonably necessary to accommodate the lower level entrance to the Facility.

c. Warranties and Assignment. City covenants that City's Improvements incorporate only new materials and equipment, and for all City Improvements other than the Connectional Elements, City hereby assigns to Theater all guarantees and warranties given by its contractors concerning defective design, workmanship and materials, latent or otherwise, but only to the extent governing all or a portion of the City's Improvements other than the Connectional Elements, including but not limited to those guarantees and warranties contained in the following contracts:

- (i) CONTRACT B: Garage Structure
City of Chicago | Harston/Schwendener, Joint Venture
Contract no. PN-84-P011536;
- (ii) CONTRACT B: Garage Structure
Public Building Commission | Walsh/II In One, Joint Venture
Contract No. 1199;
- (iii) CONTRACT E: Metra Structure
City of Chicago | Harston/Schwendener, Joint Venture
Contract No. PN-84-P011658; and
- (iv) CONTRACT E: Metra Structure
Public Building Commission | Walsh/II In One, Joint Venture
Contract no. 1201.

City represents and warrants that said assignment is free and clear of all liens and encumbrances. City agrees to cooperate with Theater in the enforcement by Theater of any such express warranties or guarantees of workmanship or materials given by subcontractors, architects, draftsmen, or

materialmen that guarantee or warrant against defective design, workmanship or materials. In the event the City is the beneficiary of any other similar guaranties or warranties for (and only to the extent of) City Improvements (other than the Connectional Elements) by means of any intergovernmental agreement with the Public Building Commission, City agrees likewise to provide copies of such warranties and guaranties to Theater and to assign such warranties and guaranties to Theater promptly upon request.

d. Termination Right. If Theater is deprived of its intended use of the Premises as provided in this Lease or otherwise constructively evicted from the Premises as a result of any defects in City's Improvements, and if such dispossession or constructive eviction continues beyond 180 days, Theater shall have the right, subject to the terms of any Leasehold Mortgage, to terminate this Lease without any liability therefor to City, which termination right shall be in addition to all other remedies available to Theater at law or in equity.

e. Liens. City shall complete construction of City's Improvements in a good and workmanlike manner in accordance with the terms of this Lease, all Requirements, and Exhibit "F" free of mechanic's or materialmen's liens or other similar liens. If any of City's Contractors, employees, officials, agents, or any other person directly or indirectly acting for, through, or under any of them files or maintains a lien or claim prohibited by this paragraph, City agrees to cause such liens and claims to be satisfied, removed, or discharged, by bond, payment, or otherwise, within thirty (30) days from the date of the filing thereof; provided, however, that City may extend the thirty (30) day period for a reasonable period if City reasonably determines that such lien or claim cannot be so satisfied, removed, or discharged in such period and that City is proceeding diligently to cause such liens or claims to be satisfied, removed, or discharged. Upon City's failure to cause such liens or claims to be satisfied, removed, or discharged, Theater shall have the right to cause such liens or claims to be satisfied, removed, or discharged by any reasonable means at City's sole cost, such cost to include reasonable legal fees. Within ten (10) days of the receipt of a statement from Theater documenting the actual cost of having any such liens satisfied, removed, or discharged, City shall reimburse Theater such amount. City agrees to give, or cause to be given, a copy of these provisions to all Contractors performing any of City's Work and shall include these provisions in all such Contracts and/or give written notice of same to all Contractors or other persons having oral or written agreements with such Contractors.

f. Change Orders. Either City or Theater, without invalidating this Lease, may request a Change Order regarding City's Improvements. No such Change Order shall become effective unless approved by both City and Theater. All such approved Change Orders shall be signed by City and Theater and, upon the issuance of such Change Orders, City shall duly prosecute the changes relating to City's Improvements in accordance with the requirements of such Change Order. The additional costs and charges, after deducting any reduction in cost or saving realized in the cost of any portion of City's Improvements occasioned by Change Orders, actually incurred in connection with the performance of a Change Order (including sales and any other taxes imposed thereon and the fees of any engineers or architects whose services may be required due to the nature of the Change Order), are referred to in this Lease as the "Change Order Costs". Any savings

resulting from a Change Order are referred to in this Lease as "Change Order Savings". Change Order Costs and Change Order Savings shall be allocated by the parties as agreed in the approval of such Change Order. Notwithstanding the foregoing, any Change Order Cost related to City's Work caused by the errors or omissions of a party to this Lease or its agents shall be borne by the party who caused or whose agent caused the Change Order Cost to be incurred.

g. Indemnification by City. Notwithstanding any other terms and conditions stated in this Lease, including any obligations regarding insurance coverage or regarding termination or suspension, and to the full extent permitted by law, City agrees to defend, indemnify and hold Leasehold Mortgagee, Theater, its officers, agents and employees, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands of every kind and nature (including all reasonable costs for investigation, reasonable attorneys' fees, court costs and expert fees) arising by reason of injury or death of any person or damage to property arising out of or incident to City's Work or City's Contractor's performance or non-performance of the City's Work or of any obligation under this Lease or the enforcement thereof, including the enforcement of this indemnification provision, or the acts or omissions of City or any of City's Contractor's, officers, agents, employees, contractors, subcontractors, licensees or invitees or the presence of City or its agents or employees or their property upon the Facility Site, to the extent caused by the negligence or intentional acts of or omissions of City, the City's Contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable (regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder). Upon notice from Theater of any claim of liability which is covered under this provision, City shall appear and defend all suits brought upon such claims and lawsuits and shall pay all costs and expenses incidental thereto, but Theater shall have the right, at its option, to participate in the defense of any suit, without relieving City of any of its obligations hereunder. This paragraph shall survive expiration or early termination of this Lease. City shall insert or cause to be inserted in every Contract entered into by City and after the Commencement Date for work to be done by City on the Facility Site a substantially identical provision indemnifying Theater, its officers, agents and employees. City and Theater shall promptly provide, or cause to be provided, to each other copies of such written notices as they may receive of any claims, actions, or suits given or filed in connection with the performance or the performance of the Work by any Contractor.

h. No Damages For Delay. For any Contract entered into by City after the Commencement Date for any work to be done by City on the Facility Site, City shall cause its Contractors to agree that claims for damages or charges for additional costs or fees shall not be made against City by such Contractor, for costs incurred by reason of delays, disruptions, or hindrances in the respective Contractor's City's Work. In the event that any Contractor is delayed by causes related to the Theater, including the Theater's Work, the Project Schedule for the performance of such Work shall be extended by City and Theater to reflect the extent of such delay, provided that City shall have given Theater written notice within ten (10) days of the commencement of such delay. Such notice by City shall include a description of the reasons for the delay and the steps to be taken by City and the City's Contractor to mitigate the effect of such delay on the Project Schedule. Theater shall not be responsible to City or its Contractors for any claims for damages or

charges for additional costs or fees incurred by reason of delays, disruptions, or hindrances caused by City or City's bad faith, fraud, or direct tortious interference with its Contractors.

i. Testing. City has tested all individual components of City's Work to reasonably determine that each component as installed meets the specified performance requirements. The results of said tests have been provided to Theater. City shall identify problems and arrange for the correction of any defect or deficiencies in workmanship, materials or equipment. Any subsequent tests may be witnessed by Theater, City and such other parties as reasonably may be designated by Theater. City shall enforce warranties in the event of failures or other noncompliance, to the extent not assigned to Theater under Section 5.7(c).

j. Final Completion of City's Work. On or before the Commencement Date, City shall prepare and deliver to Theater for its review and comment, an analysis of close-out requirements, conditions, and items related to the City's Improvements, other than the Connectional Elements. City shall address, at a minimum, the following elements in its analysis:

(i) As-built Drawings. City shall obtain from City's Contractor complete as-built drawings for all of City's Work under the applicable Contract.

(ii) Substantial Completion. City shall notify Theater in writing of the Substantial Completion of City's Work and shall provide Theater with a copy of City's proposed punch list on the City's Improvements. City and Theater shall agree on the items to be included in the punch list ("Agreed Site Punch List"). City shall submit such Agreed Site Punch List to the Contractor. Thereafter, City shall monitor the Contractor's progress to ensure that all items on the Agreed Site Punch List have been promptly and satisfactorily completed.

(iii) Notice of Final Completion of City's Work. City shall notify Theater in writing when it has been notified by any Contractor that the Contractor's portion of City's Work is complete.

(iv) Lien Waivers. City shall collect, log, review for accuracy, and maintain any and all released and lien waivers from the City's Contractors. City shall further collect appropriate evidence that there are no liens or claims or stop notices filed or outstanding against Theater or City in connection with each Contract for City's Work to be closed out.

k. Variation.

(i) Monitoring. Theater shall have the right to review City's Work to assure that it has been performed in material conformity with the Final Site Plans, Specifications and Work Plan and in accordance with the applicable standards for such Work under this Lease. In order to assist Theater reviewing City's Work, City's Project Manager

shall submit, or cause to be submitted, to Theater copies of all surveys, soil borings, and field test reports; material certificates and samples; approved shop drawings; progress reports; and any other documents related to the City's Work that may be reasonably requested by Theater. Theater's Project Manager or his representative shall be at the Millennium Project Property and the Facility Site, or available by telephone, at all times with authority to issue field orders and act with respect to this Lease.

(ii) Resolution of Variance. In the event that City's Work is at material variance from the Final Site Plans, Specifications and Work Plan, or that it does not comply with this Lease, City shall expeditiously resolve such variance or non-compliance. City shall advise Theater in writing of its intended resolution within three (3) business days following notification of such variance from Theater.

(iii) [Intentionally Omitted]

(iv) Correction. Any of City's Work which is at material variance from the Final Site Plans, Specifications and Work Plan shall be corrected, replaced or retrofitted by City, directly or through its Contractors. If such City's Work is not corrected, replaced, or retrofitted by City or its Contractors within thirty (30) days following notice from Theater to City, Theater may cause such City's Work to be corrected, replaced, or retrofitted with its own forces or otherwise, at the expense of City, provided that in the event such City's Work is not capable of being corrected, replaced, or retrofitted within said thirty (30) day period, City shall be afforded such additional time as may be reasonably necessary to correct, replace, or retrofit such City's Work.

5.8 Construction of Facility (Theater's Work).

a. Obligation. Theater agrees to complete Theater's Work in a good and workmanlike manner in accordance with the Requirements and in accordance with the Final Plans, Specifications and Work Plan (which are incorporated by reference into this Lease) and subject to the provisions of this Lease. **TIME IS THE ESSENCE OF THIS LEASE FOR THE COMPLETION OF THE ROOF STRUCTURE (AND CERTIFICATION UNDER SECTION 2.4) AND THE SUBSTANTIAL AND FINAL COMPLETION OF THEATER'S WORK AND THE FACILITY IN ACCORDANCE WITH THE PROJECT SCHEDULE.** Theater shall commence or cause to be commenced Theater's Work on the Facility within 120 days of the Commencement Date and shall diligently prosecute Theater's Work to completion of the Facility, subject to the schedule established pursuant to the Contract, but in no event shall the Roof Structure be completed and certified as provided in Section 2.4 later than seventeen (17) months after the Commencement Date, and in no event shall the Facility be substantially completed later than the later of (i) three (3) months after certification of completion of the Roof Structure, and (ii) twenty (20) months after the Commencement Date, subject to Unavoidable Delays and to delays caused or contributed to by City, or those acting for or under City (collectively, "City Delays"). Theater also shall maintain an adequate and competent staff, available as needed to achieve this goal. If, after the date of this

Lease, delay in completion or commencement of Theater's Work is caused or contributed to by City Delays, then the time for commencement and completion of such Theater's Work shall be extended for the additional time caused by such City Delays.

b. Changes to the Plans, Specifications and Work Plan. Theater shall provide prior written notice to City of any material change it proposes to the Final Plans, Specifications and Work Plan and any Change Order. Such notice shall describe and document the change and its potential impact. Without the prior written consent of the City, not to be unreasonably withheld, no change to the Final Plans, Specifications and Work Plan shall be implemented by Theater (i) that materially alters the scope of the Work; (ii) adversely affects the City's Exclusive Elements or the Millennium Project; (iii) differs materially from the Final Plans, Specifications and Work Plan; or (iv) increases the costs for which City has responsibility for payment. City will approve, conditionally approve, or disapprove submissions of requests for changes within three (3) business days following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation. Either City or Theater, without invalidating this Lease, may request a Change Order regarding Theater's Work. No Change Order requiring City's approval as provided above shall become effective unless approved by both City and Theater. All such approved Change Orders shall be signed by City and Theater and, upon the issuance of such Change Orders, Theater shall duly prosecute the changes relating to Theater's Work in accordance with the requirements of such Change Order. The additional costs and charges, after deducting any reduction in cost or saving realized in the cost of any portion of Theater's Work occasioned by such Change Orders, actually incurred in connection with the performance of a Change Order (including sales and any other taxes imposed thereon and the fees of any engineers or architects whose services may be required due to the nature of the Change Order), are Change Order Costs. Change Order Costs and Change Order Savings for Change Orders requiring City's approval shall be allocated by the parties as agreed in the approval of such Change Order. Notwithstanding the foregoing, any Change Order Cost related to Theater's Work caused by the errors or omissions of a party to this Lease or its agents shall be borne by the party who caused or whose agent caused the Change Order Cost to be incurred.

c. Contracts for Facility Construction.

(i) Selection of Contractors. Theater shall award contracts for Theater's Work to be performed, but Theater shall consult with the most recent list of Non-responsive Bidders issued by the Purchasing Agent and shall not employ any Contractor appearing on such list.

(ii) Disclosure to Contractors; Contract Content. Theater agrees that this Lease and all of its provisions, including the compliance provisions set forth in Article 6, below, shall be disclosed to each of Theater's Contractors, including suppliers of materials, furnishers of services, subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Lease, prior to each such Contractor entering into a Contract with Theater. Theater shall not include or allow to be included in the General Contract or any

Contract any provision which, either individually or collectively, is contrary to or negates, conflicts with, or otherwise voids the terms and conditions of this Lease. Theater acknowledges to City that each Contractor, regardless of its receipt of the disclosure set forth in this Section 5.8(c)(ii) is Theater's agent or subagent and shall be acting on behalf of Theater with respect to Theater's performance under this Lease.

(iii) Contract Assignment. Subject to the rights of Theater's Lenders as set forth in Article 10, below, the General Contract shall contain provisions making it assignable to City upon City's termination of this Lease pursuant to Article 24 of this Lease, such assignment to be effective on a date chosen by the City, provided such date is not less than twenty (20) days following delivery to Contractor of a written notice to Theater and such Contractor. Theater agrees that such General Contract shall further state in substance that within such twenty (20) day period, the Contractor shall notify the City in writing of all amounts due and unpaid under the Contract prior to the effective date of the assignment. In the event the City elects in its sole and absolute discretion to proceed with the assignment after receipt of such notice from the Contractor, the Contractor shall be obligated to continue performance of its obligations under this Contract on behalf of the City so long as the City agrees to make payment of all amounts due under the Contract arising (a) prior to the effective date of the assignment, but only to the extent set forth on the Contractor's notice as described above, and (b) from and after the effective date of the assignment. City shall not be responsible for any claims, suits, or causes of action relating to the General Contract arising from or related to any fraud, misrepresentation, negligence, or willful or intentionally tortious conduct by Theater, its officials, employees, agents, or other Contractors. Nothing herein shall be deemed to require City to accept any such assignment.

(iv) No Damages For Delay. Theater shall cause each of its Contractors to agree that claims for damages or charges for additional costs or fees shall not be made against Theater by such Contractor, for costs incurred by reason of delays, disruptions, or hindrances in the respective Contractor's Theater's Work. In the event that any Contractor is delayed by causes related to the City, including the City's Millennium Project, the Project Schedule for the performance of Theater's Work shall be extended by City and Theater to reflect the extent of such delay, provided that Theater shall have given City written notice within ten (10) days of the commencement of such delay. Such notice by Theater shall include a description of the reasons for the delay and the steps to be taken by Theater and the Theater's Contractor to mitigate the effect of such delay on the Project Schedule. City shall not be responsible to Theater or its Contractors for any claims for damages or charges for additional costs or fees incurred by reason of delays, disruptions, or hindrances caused by Theater or Theater's bad faith, fraud, or direct tortious interference with its Contractors. Notwithstanding the foregoing, if Theater fails to cause its Contractors to agree to the provisions of this subparagraph 5.8(c)(iv), such failure shall not be deemed to be a Default of Theater under this Lease, but in such event, Theater shall not be entitled to make any claim against the City for any damages or charges for additional costs or fees by reason of delays, disruptions or hindrances to Theater's work caused in whole or in part by the City.

d. Variation.

(i) Monitoring. City shall have the right to monitor Theater's Work on the Facility to assure that it is performed in material conformity with the Final Plans, Specifications and Work Plan and in accordance with the applicable standards for such Theater's Work under this Lease. In order to assist City in monitoring Theater's Work, Theater's Project Manager shall submit, or cause to be submitted, to City copies of all surveys, soil borings, and field test reports, material certificates and samples, approved shop drawings, progress reports and any other documents related to the Facility that may be reasonably requested by City. City's Project Manager or his representative shall be at the Millennium Project Property and the Facility Site, or available by telephone, at all times with authority to issue field orders and act in accordance with the terms of this Lease.

(ii) Resolution of Variance. In the event that Theater's Work is at material variance from the Final Plans, Specifications and Work Plan, or that it does not comply with this Lease, Theater shall expeditiously resolve such variance or non-compliance. Theater shall advise City in writing of its intended resolution within three (3) business days following notification of such variance from City.

(iii) [Intentionally Omitted]

(iv) Correction. Any of Theater's Work which is at material variance from the Final Plans, Specifications and Work Plan shall be corrected, replaced or retrofitted by Theater, directly or through its Contractors. If such Theater's Work is not corrected, replaced, or retrofitted by Theater or its Contractors within thirty (30) days following notice from City to Theater, City may cause such Theater's Work to be corrected, replaced, or retrofitted with its own forces or otherwise, at the expense of Theater, provided that in the event such Theater's Work cannot be corrected, replaced, or retrofitted within said thirty (30) day period, Theater shall be afforded such additional time as may be reasonably necessary to correct, replace, or retrofit such Theater's Work. Notwithstanding the foregoing, as long as the Leasehold Mortgage is in effect, City will not exercise its rights under this section unless and until it has given Leasehold Mortgagee at least sixty (60) days' advance notice of its intention so to act and the Theater's Work has not been corrected, replaced or retrofitted within such time period, provided however, that in the event Leasehold Mortgagee needs to obtain possession of the Premises in order to effectuate such cure, the expiration of such period shall be tolled for so long as Leasehold Mortgagee is actively and continuously attempting to obtain possession of the Premises, whether through judicial foreclosure or otherwise, but in no event longer than six (6) months.

e. Certain Payments and Contributions. City and Theater shall join together in requesting in writing that the Chicago Park District contribute (i) during the 2002 budget year; the sum of \$1,200,000 toward the cost of construction of the City's Exclusive Elements; and (ii) during the 2003 budget year, the sum of \$1,400,000 toward the cost of construction of the orchestra level dressing rooms, toilets and showers, principal artists' dressing rooms and conductor's dressing room for the Bandshell, the orchestra lounge with pantry and the chorus lounge with pantry. Notwithstanding anything to the contrary contained in this Lease, Theater shall not be obligated to build out the spaces referred to in (i) or (ii), above, until the Chicago Park District irrevocably commits in writing to fund the sums referred to in clauses (i) and (ii), above. City will use commercially reasonable efforts to obtain from the Chicago Park District staff a letter wherein the staff shall commit to recommending the above-referenced funding to the Park District Board. In the event of a budget shortfall, City and Theater will negotiate in good faith in an attempt to resolve such shortfall.

f. Construction Coordination. Theater and City hereby jointly acknowledge the benefit that all parties will derive by coordinating the construction of the improvements on each of the Parcels. Accordingly, Theater and City shall ensure that their respective employees, agents and contractors coordinate, to the extent commercially feasible, the construction of the improvements on the two Parcels, including without limitation, the timing and staging of construction. Without limiting the foregoing, Theater and City shall cause their respective general contractors and/or construction managers to meet regularly as necessary to coordinate their activities and to ensure that, with respect to any improvements that have elements of commonality to both Parcels, the scope of each party's work is clearly delineated to the extent commercially reasonable. The parties currently contemplate that at a minimum, the coordination described herein shall encompass the following:

(i) the construction crane for the initial improvements being constructed on the Facility Site will have a swing radius that, from time to time, will extend over the Millennium Project Property;

(ii) completion of the concrete and masonry work on the southern end of the initial improvements being constructed on the Facility Site may involve the erection of scaffolding on, and the movement of materials across, the Millennium Project Property;

(iii) by the Commencement Date, all equipment, excess spoil material, ramps and related staging equipment related to the improvements being constructed on the Millennium Project shall be removed from the Facility Site, and City shall use its reasonable best efforts to provide quarry or other sites for Theater to dispose of excess excavation material from the Facility Site without charge; and

(iv) in the event City has not completed City's Freight Elevator Work by August 1, 2002, Theater may, at its option, construct and install such temporary facilities as it may deem reasonably necessary to permit the Freight Elevator to be used in the manner contemplated by the Final Plans, Specifications and Work Plan, and the costs of such

temporary facilities shall be borne by City and be paid to Theater within 30 days of invoice therefor to City. Any subsequent work by City related to the Freight Elevator shall be done solely at City's expense and in a manner so as not to disrupt the scheduled use of the Freight Elevator by Theater.

In order to permit the Theater and the City to monitor the progress of the construction on their respective Parcels, the City and Theater shall (i) keep each other reasonably informed of matters relating to the construction, (ii) provide to each other all information that the Theater or City may from time to time reasonably request regarding the City's and Theater's adherence to their respective construction schedules and projected completion dates; and (iii) give each other reasonable advance notice of periodic meetings among each other's contractors, project managers, architects, and other members of the project teams, and permit each other to have one or more representatives attend such meetings. If at any time and from time to time the City or Theater change or propose in writing to change their respective construction schedules for the City's Facilities relying upon or affecting the Common Support Facilities, the Park Improvements or the Facility, as the case may be, the proposed change to the construction schedule shall be provided promptly to the other party.

5.9 Post-Construction.

a. Start-Up and Testing. Prior to Final Completion of Theater's Work, Theater shall perform the initial start-up and operational tests of all individual components of Theater's Work as Theater shall reasonably determine. Such tests shall be designed to demonstrate that each component as installed meets the specified performance requirements. Theater shall monitor and control the testing in order to identify problems; verify the operational safety of the utilities, equipment, and operations systems; and arrange for the correction of any defect or deficiencies in workmanship, materials, or equipment. Theater shall give City advance notice of any test. The tests may be witnessed by City, Theater and such other parties as reasonably may be designated by City. Theater shall enforce warranties in the event of premature utilities, equipment, or operations systems failures or other noncompliance. Theater shall provide City with a copy of the written results of such testing.

b. Prior to Final Completion of Theater's Work. Theater shall prepare and deliver to City for its review and comment no less than thirty (30) days prior to the date each Contract for the Theater's Work is to be closed out, an analysis of close-out requirements, conditions, and items related to the City's Exclusive Elements. Theater shall address, at a minimum, the following elements in its analysis:

(i) As-built Drawings. Theater shall obtain from the General Contractor or each Contractor complete as-built drawings for all of Theater's Work under the applicable Contract.

(ii) Substantial Completion. Theater shall notify City in writing of the Substantial Completion of Theater's Work and shall provide City with a copy of the proposed

punch list on the Facility. Theater and City shall agree on the items to be included in the punch list ("Agreed Punch List"). Theater shall submit such Agreed Punch List to the Contractor. Thereafter, Theater shall monitor the Contractor's progress to ensure that all items on the Agreed Punch List have been promptly and satisfactorily completed.

(iii) Notice of Final Completion of Theater's Work. Theater shall notify City in writing when it has been notified by any Contractor that the Contractor's portion of Theater's Work is complete.

(iv) Lien Waivers. Theater shall collect, log, review for accuracy, and maintain any and all releases and lien waivers from the Contractors. Theater shall further collect appropriate evidence that there are no liens or claims or stop notices filed or outstanding against City or Theater in connection with each Contract to be closed out.

(v) Documents, Operations and Maintenance (O&M) Manuals, and Warranties. Theater shall collect and maintain copies of all documents, O&M Manuals, and warranties required under each Contract. Theater shall review all such material for Contract compliance. Theater shall further ensure that each O&M Manual provides a detailed description of and procedures for the proper operation and intended functions of the related systems and/or equipment and that maintenance manuals describe in detail the required routine and preventive maintenance operations and the procedures for performing such tasks.

c. Roof Structure. Upon completion of the Roof Structure and the issuance of the Roof Structure Certificate as provided in Section 2.4 of this Lease, the Theater shall notify City of such fact in accordance with Section 2.4, above, and City shall be entitled to begin installation of the Park Facilities. City shall coordinate such installation with Theater's Work and Theater and City each agree to act reasonably and cooperate in order that both Theater's Work and City's installation can proceed expeditiously.

d. Removal of Structures. Theater shall cause each Contractor to remove any temporary security barriers or other temporary structures if erected solely in connection with its portion of the Theater's Work, after such Contractor has been deemed to have completed its portion of Theater's Work, but prior to issuance of a Certificate of Occupancy.

5.10 Indemnification. Notwithstanding any other terms and conditions stated in this Lease, including any obligations regarding insurance coverage or regarding termination or suspension, and to the full extent permitted by law, Theater agrees to defend, indemnify and hold City, its officers, agents and employees, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands of every kind and nature (including all reasonable costs for investigation, reasonable attorneys' fees, court costs and expert fees) arising by reason of injury or death of any person or damage to property arising out of or incident to Theater's Work or Theater's Contractor's performance or non-performance of the Theater's Work or of any obligation under this Lease or the enforcement thereof, including the enforcement of this indemnification provision, or

the acts or omissions of Theater's or any of Theater's Contractor's officers, agents, employees, contractors, subcontractors, licensees or invitees or the presence of Theater or its agents or employees or their property upon the Facility Site, to the extent caused by the negligence or intentional acts of or omissions of Theater, the Theater's Contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable (regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder). Upon notice from City of any claim of liability which is covered under this provision, Theater shall appear and defend all suits brought upon such claims and lawsuits and shall pay all costs and expenses incidental thereto, but City shall have the right, at its option, to participate in the defense of any suit, without relieving Theater of any of its obligations hereunder. This paragraph shall survive expiration or early termination of this Lease. Theater shall insert or cause to be inserted in every Contract a substantially identical provision indemnifying City, its officers, agents and employees. City and Theater shall promptly provide, or cause to be provided, to each other copies of such written notices as they may receive of any claims, actions, or suits given or filed in connection with the performance of the Work by any Contractor.

5.11 Insurance During Construction.

a. With respect to Theater's Work, Theater shall procure or require, and with respect to City's Work, City shall procure or require, that all Contractors procure and maintain at all times, until final acceptance of the respective Work covered by this Lease, or longer to the extent a contractor is required to return during the warranty period, the types of insurance specified in Exhibit "H", with insurance companies authorized to do business in the State of Illinois, covering all operations under this Lease, whether performed by a Contractor or by its subcontractors.

b. [Intentionally Omitted].

c. Theater and City each will cause each Contractor doing Theater's Work or City's Work, as the case may be, to provide to City's Project Manager and Theater's Project Manager an original certificate of insurance evidencing the required coverage to be in force on the date of the Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of the Contract. The insurance specified shall be carried until all Work required to be performed under the terms of each respective Contract is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force shall constitute a default under the Contract. The insurance shall provide for 30 days prior written notice to be given to City and Theater in the event coverage is substantially changed, canceled, or non-renewed. Theater and City shall cause each of their respective Contractors to require its respective subcontractors to carry the insurance required herein, or shall permit the Contractors to provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted shall so stipulate. Theater and City shall cause each of their respective Contractors to agree that any insurance coverages and limits furnished by the Contractor shall in no way limit the Contractor's liabilities and responsibilities specified within the Contract, by law, or in equity. Theater shall cause its Contractors to agree that their insurers shall waive the insurers' rights against City, by subrogation

or otherwise, and City shall cause its Contractors to agree that their insurers shall waive the insurer's rights against Theater, by subrogation or otherwise. Theater shall cause its Contractors to agree that any insurance maintained by City, and City shall cause its Contractors to agree that any insurance maintained by Theater, shall apply in excess of and not contribute with insurance provided by the Contractor under the Contract.

5.12 Liens Prohibited.

a. Theater covenants and agrees that it shall notify its Contractors that to the extent permitted by applicable laws, no mechanics' liens under 770 ILCS 60/23 (1996) ("mechanics' liens") will be permitted to arise, be filed, or maintained against the Facility, the Millennium Project Property, including the Facility Site, or any part thereof or any interest therein or against any monies of City for or on account of any Theater's Work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Facility; and Theater, for itself and its Contractors, does hereby expressly waive, release, and relinquish such liens and all rights to file or maintain such liens; and agrees further that this waiver of liens and waiver of the right to file or maintain such liens shall be an independent covenant.

b. Theater and City shall give, or cause to be given, a copy of these provisions to all of their respective Contractors and shall include these provisions in all Contracts and/or give written notice of same to all Contractors or other persons having oral or written agreements with such Contractors.

ARTICLE 6

DELAY; COMPLIANCE

6.1 Unavoidable Delays. Neither party shall be considered in breach of its obligations with respect to the commencement or completion of any obligation under this Lease to the extent of a delay caused by unforeseeable causes beyond such party's control and without such party's fault or negligence ("Unavoidable Delays"), which Unavoidable Delays shall include but not be limited to, delays or halts in construction which are compelled by court order, or caused by acts of God, acts of the public enemy, acts of the United States government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, shortages of materials and unusually severe weather or delays of contractors or subcontractors due to any such cause. The time for the performance of the obligations shall be extended only for the period of the delay if the obligated party notifies the other party in writing within five (5) days after the beginning or its discovery of any such delay, whichever comes later. This provision shall not apply to the obligations to defend, indemnify and hold harmless set forth elsewhere in this Lease.

6.2 Compliance with all Laws.

a. General Obligation. Theater shall comply and shall cause all Contractors doing any of Theater's Work, and City shall comply and cause all Contractors doing any of City's Work, to comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of Theater's Work or City's Work, as the case may be.

b. [Intentionally Omitted].

c. Compliance with City/State Contract Requirements. Theater agrees to execute such certificates as may be necessary to comply with all applicable Federal, State, and local laws, codes, regulations, ordinances, executive orders, rules, and orders, including without limitation such certifications as are listed in Subsections (i) and (ii), below.

(i) Disclosures/Office of Inspector General/Anti-Bribery/Anti-Collusion/State Tax Delinquency. Theater agrees that the Disclosure Affidavit which is attached as Exhibit "M" has been duly executed on its behalf and is accurate and complete as of the date of this Lease.

(ii) Ethics. Theater hereby represents and warrants that it is not currently in violation of Chapters 2-156 of the Municipal Code of Chicago Theater further agrees that it will not violate those provisions during the Term, and that it will provide in each Contract that any Contract negotiated, entered into, or performed in violation of said provisions will be invalid and without any force whatsoever.

(iii) Theater shall comply and cause its Contractor to comply with additional Special Conditions set forth in Exhibit "N", which is attached hereto and incorporated herein.

6.3 Civil Rights and Employment.

a. Non-discrimination.

(i) General Requirements. In the performance of Theater's Work, it shall be an unlawful employment practice for Theater to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individuals race, color, religion, sex, age, handicap, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individuals race, color, religion, sex, age, handicap, or national origin.

(ii) Federal Requirements. Theater shall comply with the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq. (1981), as amended. Theater shall further comply with Executive Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 42 U.S.C. Sec. 6101-6106 (1981), as amended; the Rehabilitation Act of 1973, 29 U.S.C. Sec. 793-794 (1981), as amended; the Americans with Disabilities Act, P.L. 101-336; and 41 C.F.R. Part 60 et seq. (1990), as amended.

(iii) State Requirements. Theater shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 (1996), as amended; the Public Works Employment Discrimination Act, 775 ILCS 10/1 (1996), as amended; and the Environmental Barriers Act, 410 ILCS 25/1 et seq. (1996), as amended.

(iv) City Requirements. Theater shall comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended, including, but not limited to the following section:

No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income. No employment agency shall directly or indirectly discriminate against any individual in classification, processing, referral, or recommendation for employment because of the individual's race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income. The prohibitions contained in this paragraph shall not apply to any of the following:

1. Use of an individual's unfavorable discharge from military service as a valid employment criterion where authorized by Federal law or regulation; or where the affected position of employment involves the exercise of fiduciary responsibilities and the reasons of the dishonorable discharge related to his or her fiduciary capacity;
2. Hiring or selecting between individuals for bona fide occupational qualifications;
3. Giving preferential treatment to veterans and their relatives as required by Federal or State law or regulation.

Further, Theater shall furnish such reports and information as reasonably requested by the Chicago Commission of Human Relations in furtherance of the foregoing.

b. Equal Employment Opportunity, State. In the event of Theater's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act, or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), Theater may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. In the performance of Theater's Work under this Lease, Theater agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

2. That, if it hires additional employees in order to perform Theater's Work, it will determine the availability (in accordance with the Department's Rules) of minorities and women in the area (s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

4. That it will send to each labor organization or representative of workers with which it has or is bound by collective bargaining or other agreements, a notice advising such labor organization or representative of its obligation under the Illinois Human Rights Act and the Department's Rules. If any such labor organization or representative fails or refuses to cooperate with it in its efforts to comply with such Act and Rules, it will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

5. That it will submit reports as required by the applicable Department's Rules, furnish all relevant information as may from time to time reasonably be requested by the Department or City, and in all respects comply with the Illinois Human Rights Act and the Department's Rules.

6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of City and the Department for purposes of

investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.

7. That it will include, verbatim or by reference, the provisions of this clause in every Contract it awards under which any portion of Theater's Work obligations are undertaken or assumed, so that such provisions will be binding upon such Contractor. In the same manner as with other provisions of this Lease, Theater will be liable for compliance with applicable provisions of this clause by its Contractors; and further it will promptly notify City and the Department in the event any Contractor fails or refuses to comply therewith. In addition, Theater will not utilize any Contractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

c. City-MBE/WBE. In the performance of Theater's Work under this Lease, Theater shall comply, and shall cause the General Contractor to comply, with the requirements of the Minority-Owned and Women-Owned Business Procurement Program as set forth in Chapter 2, Section 2-92-420 of the Municipal Code. The Special Conditions for such program are attached hereto and incorporated by reference herein as a portion of Exhibit "N".

6.4 Contractors Required to Comply. Theater agrees that all of the provisions set forth in Sections 6.2, 6.3 and 6.5 will be incorporated in all Contracts entered into with any suppliers of materials, furnishers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with the performance of Theater's Work under this Lease. Theater agrees to cause its Contractors to execute such certificates as may be necessary in furtherance of these provisions. Such certifications shall be attached and incorporated by reference in the applicable Contracts. In the event that any Contractor is a partnership or joint venture, Theater shall also include provisions in its Contracts insuring that the entities comprising such partnership or joint venture shall be jointly and severally liable for its obligations thereunder.

6.5 Cooperation by Parties. The parties hereby agree to use their best efforts and good faith in the performance of this Lease and to cooperate with each other in the completion of the Work hereunder. Theater and City further agree to implement such measures as may be necessary to ensure that its staff and its Contractors shall be bound by the provisions of this Lease.

ARTICLE 7

THEATER'S INSURANCE

7.1 Theater shall, at its expense, maintain in force during the Term a policy of commercial general liability insurance insuring City and Theater against liability arising from

Theater's use, occupancy or maintenance of the Facility and the Facility Site and appurtenant areas ("Liability Insurance") and other policies of insurance as provided in this Article.

7.2 [Intentionally Omitted].

7.3 All insurance maintained by Theater pursuant to this Section shall be written by insurance companies authorized to do business in the State of Illinois, shall name City and Leasehold Mortgagee as an additional insured as to applicable liability coverages, shall be in form and substance reasonably satisfactory to City and Leasehold Mortgagee and shall meet requirements set forth in Exhibit "H". Leasehold Mortgagee shall be named as mortgagee/loss payee on the builder's risk policy during construction and on the casualty policy thereafter, subject to the escrow provisions stated in Section 7.5(a).

7.4 Prior to Substantial Completion, Theater shall furnish to City certificates of insurance reflecting that the policies required to be maintained under Part IV of Exhibit H to this Lease are in force, and also shall provide certificates evidencing all renewals of such policies.

7.5 Insurance policies maintained by Theater pursuant to Article 7 of this Lease shall provide that the proceeds of all such insurance shall be payable by the insurer or insurers in accordance with the provisions of this Lease, including Exhibit "H".

a. As to the "All Risk" and Builders Risk insurance required hereunder, each such policy shall provide that settlement for the loss shall be made with Theater, City and Leasehold Mortgagee. Payment of all losses under any such All Risk and Builders Risk property policy shall be administered, paid out and disbursed on conditions and through an escrow as provided in this Lease. Insurance proceeds from the All Risk and Builders Risk policy shall be used to pay for the cost of Restoration. All such proceeds of insurance shall be disbursed from an escrow established with an escrow agent and pursuant to an escrow agreement in compliance with the terms above mutually acceptable to Theater, City and Leasehold Mortgagee, if any. Upon receipt by City of evidence satisfactory to it that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' liens or claims or similar liens for labor or materials supplied in connection therewith, the balance of such proceeds shall, subject to the rights of any Leasehold Mortgagee and unless an Event of Default exists, be paid to Theater or as Theater may direct. Until such time as Restoration has been completed, all insurance proceeds not theretofore spent for Restoration shall be the property of City, and Theater shall have no ownership interest in such proceeds, except that Theater may use such proceeds for Restoration as provided for herein. If an Event of Default exists, such balance of such insurance proceeds shall be applied first to cure any monetary Event of Default of Theater under this Lease and second to cure any non-monetary Event of Default of Theater.

b. Theater and City shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Theater and City shall execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance moneys.

c. Each of City and Theater hereby waives any and every claim for recovery from the other for any and all loss or damage to the Premises or to the contents thereof, whether such loss or damage is due to the negligence of City or Theater or their respective agents or employees, which loss or damage is insured pursuant to this Lease by valid and collectible insurance policies and then only to the extent of the proceeds collected or collectible under such insurance policies; provided, however, that the foregoing waiver shall not be operative in any case where the effect thereof is to invalidate any insurance coverage of the waiving party or increase the cost of such insurance coverage; provided further, that City and Theater each agree to give written notice of the terms of this mutual waiver to each insurance company which has issued, or in the future may issue, policies of property insurance, and to have said insurance policies properly endorsed to prevent the invalidation of said insurance coverage by reason of said waiver and provided further that such insurance company waives all rights of subrogation which it might have against City or Theater, as the case may be.

7.6 All insurance provided for under Section 7.1 may contain loss deductible clauses in such maximum amounts as City reasonably shall approve.

ARTICLE 8

[Intentionally Omitted.]

ARTICLE 9

CONDEMNATION

9.1 a. In the event that at any time during the Term, all or a Significant Portion of the Premises, or all street access thereto, or Theater's entire leasehold interest in all or a portion of the Premises is taken or damaged by the exercise of power of eminent domain by any condemning authority ("Condemnation Proceedings"), and the Theater does not elect to terminate this Lease as herein provided, then the share of any award resulting to City or Theater for the taking of their respective interests in and to the Premises or damages resulting to their respective interests by reason of the exercise of such power of eminent domain, shall be separately determined by the court having jurisdiction, and separate judgments with respect to such damages to City or Theater, respectively, and to each of their respective interests, shall thereafter be made and entered. City and Theater shall make such requests and petitions to the court as are consistent with the foregoing procedure.

b. If, at any time during the Term, the whole or any Significant Portion of Theater's Premises, or street access thereto, shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement in lieu thereof, then, at Theater's option to be exercised upon written notice to City (but

subject to the rights of any Leasehold Mortgagee), this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Theater hereunder shall be apportioned as of the date of such taking. Theater may exercise the option to cancel this Lease provided for herein, only if it shall notify City within forty-five (45) days after the date that Theater receives notice of such taking. The cancellation shall be effective as of the date of taking.

c. If the whole or any Significant Portion of the Premises shall be taken or condemned and Theater elects to cancel this Lease as provided for in Section 9.1(b) hereof, (i) there shall first be paid to City that portion of the award for, or attributable to the value of, the City's interest so taken, including the use of the Seasonal Elements, Common Elements and Roof Structure, and (ii) Theater shall then receive, subject to the rights of any Leasehold Mortgagees, any remaining balance of the award.

d. If Theater elects not to exercise the option to cancel this Lease pursuant to Section 9.01(b) hereof or if less than a Significant Portion of the Premises are so taken, this Lease and the Term shall continue without abatement of the Rental or diminution of any of Theater's obligations hereunder. Theater, whether or not the award shall be sufficient for such purpose, shall proceed with reasonable diligence (subject to Unavoidable Delays) to Restore any remaining part of Theater's Premises not so taken to a complete, usable, self-contained architectural unit in as good condition and repair and of at least the same value as prior to the taking. If, because of the extent of the taking, a complete Restoration is not feasible, Theater and City to the extent practicable shall agree upon the extent of a partial Restoration. In connection with such partial Restoration, Theater shall first be paid an amount of any award in Trust sufficient to complete such partial Restoration. The excess, if any, shall be equitably allocated to City and Theater in accordance with their respective interests.

e. Each of the parties shall execute and deliver any and all documents that may be reasonably required in order to facilitate collection by them of such awards in accordance with the provisions of this Article 9.

f. For purposes of this Article 9, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the Premises or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable federal or state law, or (ii) the date on which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or state law.

g. For purposes of this Article 9, a "Significant Portion" of the Premises shall be deemed to mean such portion as, when so taken, would leave remaining a balance of which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, market conditions, applicable zoning laws or regulations then existing or prevailing, readily accommodate a new Facility (or a restored Facility) of a nature similar (in color, style, architecture, floor plans, facade, shape, height, configuration, Facility sitescaping and

overall aesthetic sense) to the Facility existing at the date of such taking and after performance of all covenants, agreements, terms and provisions herein and by law required to be performed and paid by Theater.

9.2 If the temporary use of the whole or any part of the Premises shall be taken by Condemnation Proceedings as herein above referred to for a period which does not extend beyond the Term of this Lease, this Lease shall not terminate by reason thereof and Theater shall continue to pay in full the Rental and, except only to the extent that City and Theater are prevented from so doing by reason of any order of the condemning authority, City and Theater shall, as to that portion of the Premises not so taken, continue to perform and observe all of their respective covenants, conditions and obligations hereof which are herein provided to be observed or performed by each of them, all to the same extent and with the same force and effect as if such temporary use or taking had not occurred. Any award for such temporary taking, whether paid or by way of damages, rent or otherwise shall be received, held and disbursed in the manner following:

a. The amount jointly agreed upon by City and Theater as the estimated amount required to be expended during or upon the termination of such temporary use or occupancy to restore the Premises as nearly as may be reasonably possible to the condition and use which existed immediately prior to such taking, shall be paid in Trust to Theater and shall be used and available for such purposes by Theater; and

b. The remainder shall be paid over to and become the property of City and subject to the rights of any Leasehold Mortgagee, Theater in such proportion as the Court shall determine pursuant to Section 9.1(a).

ARTICLE 10

ASSIGNMENT, SUBLETTING AND MORTGAGES

10.1 a. Except as provided in this Article 10, neither Theater's Premises nor the interest of Theater in this Lease (or any portion thereof) shall be sold, assigned or otherwise transferred, whether by operation of law or otherwise. Further, Theater shall not sublet Theater's Premises without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, subject to this Article 10, Theater may subject Theater's interest in this Lease and the leasehold interest created hereby to one or more (but not more than three) Leasehold Mortgages without the consent of City but solely for the purpose of financing or refinancing a portion of the necessary costs of construction of the Facility or alterations or reconstruction thereof as permitted by Article 12, provided that the Leasehold Mortgage and the rights of the Leasehold Mortgagee, its successors and assigns shall be subject and subordinate to this Lease.

b. In the event of a Leasehold Mortgage, including an assignment as collateral security not requiring City's consent as provided in Section 10.1 (a), Theater shall give City written notice not less than thirty (30) days prior to the effective date of such Leasehold Mortgage including (i) the effective date of such Leasehold Mortgage, (ii) the name and address of the Leasehold Mortgagee, (iii) a copy of a fully executed counterpart of each instrument or document executed in connection with the Leasehold Mortgage, including the note and reimbursement agreement or other instrument of security, and (iv) in the event that the Leasehold Mortgagee is a corporation, partnership, trust or otherwise not a natural person, an affidavit of a principal officer of the assignee, setting forth the names and addresses of all directors and officers of the assignee, and of all Persons having material interests in the assignee, including all partners, shareholders (except if assignee is a publicly-traded entity), and beneficiaries and the nature and percentage of their interest, all to the reasonable satisfaction of the Corporation Counsel of City.

c. Theater may request the consent of City for all other assignments, subleases or other transfers by submitting all of the items described in Section 10.1(b). City agrees to review and determine whether to consent to the assignment within 30 days of receiving such request, and in the event of denial, to specify the specific basis of such denial.

d. Notwithstanding Section 10.1(a), Theater may enter into booking arrangements licensing portions of Theater's Premises for actual occupancy of Theater's Premises at various times and on terms acceptable to Theater by other theater, dance, fine arts and other users, for specifically defined performances or events permitted by this Lease, and City acknowledges that such bookings for such uses shall not constitute an unpermitted assignment of this Lease or subletting of Theater's Premises. Within three (3) business days of the City's written request, Theater will provide City with a copy of any booking agreement and all documents related thereto.

e. Any amendment or replacement of or revision to the articles of incorporation or succeeding document that establishes as a matter of law the formation of the corporation of the Theater where the amendment, replacement or revision results in either: (a) the conversion of the Theater in form or substance to a for-profit corporation or similar profit-based entity; (b) a material change in the vesting of authority for or method of selecting or appointing directors to the board of the Theater; or (c) a substantial variation from the purpose of Theater from those stated in its articles of incorporation, shall be deemed an assignment of Theater's rights in this Lease requiring the written consent of the City as provided in this Article 10, which consent shall not be unreasonably withheld or delayed.

10.2 No assignment of this Lease or Theater's interest in this Lease or subletting of Theater's Premises or any other transfer of interest in this Lease shall have any validity except upon compliance with the provisions of this Article 10.

10.3 Any consent by City under Section 10.1(c) above shall apply only to the specific transaction thereby authorized and shall not relieve Theater from the requirement of obtaining any prior consent of City which may be required under this Article 10 to any further assignment, sublease

or other transfer of this Lease, or transfer of stock, or subletting of Theater's Premises, either as an entirety or substantially as an entirety.

10.4 Theater shall cause all of its subtenants, operators, licensees, concessionaires, booking parties, and other occupants of the Facility (collectively, "Subtenants") to comply with Theater's obligations under this Lease, and Theater shall cause such obligations to be referred to in the applicable subleases, and/or occupancy, operating, license, booking or concession agreements and all amendments thereto ("Subleases"). After execution of any Sublease, Theater shall enforce with reasonable diligence, subject to Unavoidable Delays, all of its rights thereunder.

10.5 - 10.8 [Intentionally Omitted.]

10.9 All Subleases shall be in writing and provide that (a) they are subject and subordinate to this Lease; and (b) the Subtenants will not pay rent or other sums under the Subleases with Theater for more than one (1) month in advance.

10.10 - 10.11 [Intentionally Omitted.]

10.12 a. [Intentionally Omitted.]

b. In the event of any assignment of a Leasehold Mortgage, or in the event of a change of address of a Leasehold Mortgagee or of any assignee of such Leasehold Mortgage, Theater shall provide notice to City in writing of the new name and address not less than thirty (30) days prior to its effective date.

c. All notices required to be given pursuant to this Section 10.12 shall be in writing and delivered to City at its address set forth in Article 25 (or such other address as City shall request) in the same manner as Article 25.

d. At any time, Theater, upon being requested to do so by City, shall with reasonable promptness provide City in addition to those items referred to in Section 10.1(b), above, copies of any other documents pertinent to the Leasehold Mortgage as reasonably requested by City. Theater shall thereafter also provide City with a copy of each amendment or other modification or supplement to such instruments prior to their effective date. All recorded documents shall be accompanied by the appropriate certification of the Office of the Recorder of Deeds of Cook County, Illinois as to their authenticity as true and correct copies of recorded documents, and all documents, whether recorded or not, shall be accompanied by a certification by Theater that such documents are true and correct copies of the originals.

10.13 No surrender or material modification of this Lease shall be effective as to any Leasehold Mortgagee of which City has received notice as provided in this Lease, unless consented to in writing by such Leasehold Mortgagee.

10.14 City, upon providing Theater with any notice of: (i) Default under this Lease, or (ii) a termination of this Lease, shall at the same time provide a copy of such notice to any Leasehold Mortgagee of which City has received notice pursuant to this Article 10. No such notice by City to Theater shall be deemed to have been duly given unless and until a copy thereof has been so provided to any such Leasehold Mortgagee. Such Leasehold Mortgagee shall have such additional periods of time specified in Sections 10.15 and 10.16 to remedy the Defaults, or, as applicable, to commence remedying or cause to be remedied the Defaults specified in any such notice. City shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Theater.

10.15 If an Event of Default shall occur which entitles City to terminate this Lease, City shall have no right to terminate this Lease unless, following the expiration of the period of time given Theater to cure such Default, City shall notify Leasehold Mortgagee in writing (the "Leasehold Mortgagee Termination Notice") of City's intent to so terminate, the specific nature of the Event of Default, and whether, in the opinion of City, the Event of Default is capable of being cured by the payment of money. If, in the reasonable opinion of City, such Event of Default is capable of being cured by the payment of money (provided, however, that any sums due or alleged to be due as a result of Theater's failure to complete any portion of the Work as and when required hereunder shall not be deemed to be an Event of Default capable of being cured by the payment of money), the Leasehold Mortgagee shall have thirty (30) days from its receipt of the Leasehold Mortgagee Termination Notice to cure the Event of Default. If, in the reasonable opinion of City, the Event of Default is not capable of being cured by the payment of money, the Leasehold Mortgagee shall have forty-five (45) days from its receipt of the Leasehold Mortgagee Termination Notice to cure the Event of Default (except for Personal Defaults as defined in Section 10.18 hereof), or such longer period with respect to Not Readily Curable Event of Defaults as described in Section 10.15(c). Accordingly, despite the issuance of the Leasehold Mortgagee Termination Notice, the Lease shall not terminate if:

a. within 30 days after its receipt of the Leasehold Mortgagee Termination Notice, the Leasehold Mortgagee shall notify City of such Leasehold Mortgagee's desire to cure the Event of Default that gave rise to the termination;

b. with respect to an Event of Default which is capable of being cured by the payment of money as specified in the Leasehold Mortgagee Termination Notice, Leasehold Mortgagee, within 30 days after its receipt of the Leasehold Mortgagee Termination Notice, shall cure such Event of Default; and

c. with respect to an Event of Default which is not capable of being cured by the payment of money as set forth in the Leasehold Mortgagee Termination Notice, Leasehold Mortgagee, within 45 days after its receipt of the Leasehold Mortgagee Termination Notice, shall cure such Event of Default (other than Personal Defaults). Notwithstanding the foregoing, in the case of an Event of Default which is not reasonably capable of being cured within such 45 day period (including where the Leasehold Mortgagee has been unable to cause compliance with this Lease

because it has not obtained possession of the Premises) ("Not Readily Curable Defaults"), the 45 day cure period shall be extended for a period that is reasonably necessary to cure such Not Readily Curable Default, including to obtain possession and cause such compliance, but in no event longer than six (6) months after receipt of the Leasehold Mortgagee Termination Notice; provided, however, that such extension of the cure period shall continue only so long as Leasehold Mortgagee promptly commences to cure such Not Readily Curable Defaults, including steps to obtain possession of the Theater's Premises or to acquire or sell Theater's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means consistent with this Lease, and shall prosecute the same to completion with due diligence, to the extent not enjoined or stayed by Law.

If the Leasehold Mortgagee fails or refuses to comply with a., b., and c. above, then the City may, at such time, terminate this Lease by written notice to Theater and Leasehold Mortgagee complying with Section 10.17.

10.16 a. The acquisition of Theater's leasehold estate by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise shall not affect the application of Section 10.15. Notwithstanding anything in this Lease to the contrary, in no event shall Leasehold Mortgagee (or its designee or any purchaser at a foreclosure sale or otherwise) be liable, either on a recourse or non-recourse basis, for any alleged damages City may have suffered as a result of Theater's default under this Lease, including without limitation, Theater's failure to complete the Work in accordance with the Project Schedule or under any indemnifications given by Theater under this Lease.

b. For the purposes of this Article 10, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed, prior to a foreclosure sale or transfer or assignment in lieu thereof, to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require the Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Theater to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Theater under the Lease then in default (to the extent reasonably capable of being cured by such assignee or transferee) except prior Personal Defaults, and thereafter perform in accordance with the Lease during the duration of the Term. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the Theater's Premises shall have been or become materially damaged on, before, or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace or reconstruct the Theater's Premises only to the extent of the net insurance proceeds received by the Leasehold Mortgagee or its designee by reason of such damage. However, should such net insurance proceeds be insufficient to repair, replace or

reconstruct the Theater's Premises to the extent required by this Lease and should the Leasehold Mortgagee or its designee fail or refuse to fully reconstruct the building or other improvements to the extent required by Article 7, such failure shall constitute an Event of Default under this Lease, but in no event shall Leasehold Mortgagee have any personal liability as a result thereof.

c. Any Leasehold Mortgagee acquiring the leasehold estate of Theater pursuant to foreclosure, assignment in lieu of foreclosure or similar proceedings may, upon acquiring Theater's leasehold estate, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Leasehold Mortgagee and thereafter be relieved of all obligations accruing thereafter under this Lease; provided that such assignee has cured all then existing Events of Default other than prior Personal Defaults and delivered to City its written agreement to be bound by all of the provisions of this Lease, and the assignee has not been rejected "for cause" by City. For the purposes of this Section 10.16(c), the term "for cause" shall mean that assignee is not legally permitted to enter into an agreement with City for any reason, including its inability to comply with the requirements referenced in Section 6.2(c) of this Lease or its appearance on any list of City scofflaws or non-responsive bidders maintained by the Purchasing Agent.

d. Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage to any Leasehold Mortgagee undertaken in compliance with Section 10.16 shall be deemed to be a permitted transfer or assignment of this Lease and of the leasehold estate hereby created.

10.17 In the event of the termination of this Lease as a result of Personal Defaults or as a result of a rejection of the Lease in any bankruptcy or insolvency proceeding, City shall, in addition to providing the notices of default and termination as required by Sections 10.14 and 10.15 hereof, provide each Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination and as a result of such termination, and of all other Defaults, if any, then known to City. City agrees to enter into a new lease ("New Lease") of the Theater's Premises with such Leasehold Mortgagee or its designee meeting the requirements of Section 10.16(e) and (f) for the remainder of the Term of this Lease, effective as of the date of termination, at the Rent and upon the terms, covenants and conditions of this Lease, provided:

a. Such Leasehold Mortgagee shall make written request upon City for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives City's notice of termination of this Lease given as a result of Personal Defaults, or in the case of a termination resulting from a bankruptcy or insolvency proceeding, within sixty (60) days after the expiration of the appeal period for the order confirming rejection.

b. Within such sixty (60) day period, such Leasehold Mortgagee or its designee shall pay or cause to be paid to City or to an escrow mutually acceptable to City and such Leasehold

Mortgagee ("Escrowee"), any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, but not including attorney's fees, which City shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by City from Theater or any other party in interest under Theater. In the event of a controversy as to the amount to be paid to City pursuant to this Section 10.17(b), the payment obligations shall be satisfied if City shall be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall pay to the Escrowee the sum the City has reasonably determined to be in dispute.

c. Prior to the execution of the New Lease, such Leasehold Mortgagee or its designee shall pay all sums due under the Lease (subject to the provisions of Section 10.17(b)) and agree to remedy any of Theater's other defaults (other than Personal Defaults), of which said Leasehold Mortgagee was notified by City's notice of termination, within a reasonable period, but in no event more than six (6) months after the date of the New Lease.

d. Any New Lease made pursuant to this Section 10.17 shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises except Permitted Exceptions and matters created by, through or under Theater, and the tenant under such New Lease shall have the same right, title and interest in and to the Premises and the Connectional Elements as Theater had under this Lease. City shall assign to Tenant under such New Lease all subleases whose tenants have attorned to the City.

e. If more than one Leasehold Mortgagee shall request a New Lease pursuant to this Section 10.17, City shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. City, without liability to Theater or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the State of Illinois as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

10.18 Nothing herein contained shall require any Leasehold Mortgagee or its designee to cure any Default specified in subsections (d), (e), (f), (g), (h), (i), (j) (solely with respect to levy or attachment against Theater) and (l) of Section 24.1 ("Personal Defaults").

10.19 [Intentionally omitted.]

10.20 The Leasehold Mortgagee shall be added to any and all insurance policies required to be carried by Theater hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease. The Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a different manner for the disposition of proceeds, if any, that are payable directly to Theater under this Lease (but not such proceeds payable jointly to City and Theater or to be held in trust or in escrow under this Lease).

10.21 So long as any Leasehold Mortgage is in existence, unless Leasehold Mortgagee shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Theater therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by City or by Theater or by a third party, by purchase or otherwise.

10.22 City shall at any time have the right, in its sole discretion, to file appropriate proceedings at law or in equity requesting a determination that any lien, charge or other encumbrance on Theater's Premises shall be subordinate to the interest of City in the Premises.

ARTICLE 11

[INTENTIONALLY OMITTED]

ARTICLE 12

REPAIRS

12.1 a. Subject to the provisions of Article 2, above, Theater shall take good care of the Facility, and all sidewalks, and curbs in front of or adjacent to the Facility that service the Facility, and shall put, keep and maintain the Facility in good and safe order and working condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the same in good and safe order and working condition and to comply with all applicable Requirements ("Repairs"). Theater shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. The term "Repairs" shall include all alterations, additions, installations, replacements, removals, renewals and restorations to the extent approved by City in accordance with Articles 2 and 13 of this Lease. All Repairs made by Theater shall be at least equal in quality and class to the original Work and shall be made in compliance with all Requirements, as then in force.

b. City shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises.

12.2 In the event of damage to or destruction of the Facility or any part thereof caused by fire or other hazard, the proceeds of insurance provided in satisfaction of Articles 7, as the case may be, shall be utilized towards Restoration; provided, however, if Theater and City conclude that the improvements are destroyed beyond repair and will not be rebuilt, the Lease shall be terminated, and Theater and City shall share in the insurance proceeds on a pro-rata basis determined by each parties' loss of future use of the Facility and the Facility Site.

12.3 Roof Structure and Park Facilities. Except for those obligations of City set forth in Section 2.4, above, Theater's obligations to make Repairs shall include all work necessary and appropriate to allow City to maintain the Park Facilities upon the Roof Structure. City agrees that it will not allow or permit any activity to occur in or on the Park Facilities that will result in the load upon the Roof Structure exceeding the applicable designed tolerances, or that will compromise the integrity of the Roof Structure built in accordance with the Final Plans, Specifications and Work Plan, and maintained as required by this Lease.

ARTICLE 13

CHANGES, ALTERATIONS AND ADDITIONS

13.1 Subject to the terms of this Article 13, Theater shall have the right from time to time after the completion of the Premises and at Theater's sole cost and expense, to make nonstructural alterations and changes ("Alterations") in or to the Premises, provided there shall not then be an Event of Default under Section 24.1 and provided further that if any such Alterations would (a) affect the structural elements of the Facility, or (b) cost in excess of \$250,000.00, or (c) have a material adverse impact upon City's rights or obligations under this Lease, including City's ability to conveniently use the Facility in accordance with the terms of this Lease; or (d) subject City to any other materially adverse consequences, including but not limited to subjecting City to public ridicule or embarrassment, then such Alterations shall not be made without the written consent of City, not to be unreasonably withheld. The provisions of Article 13 shall apply to and shall be complied with by Theater as a condition to the performance of any Alteration.

ARTICLE 14

REQUIREMENTS OF PUBLIC AUTHORITIES

14.1 Compliance with Requirements. Theater shall promptly comply with any and all applicable present and future laws, rules, orders, ordinances, directives, authorities regulations, statutes, requirements, codes, orders, permits and authorizations, of all Governmental Authorities now existing or hereafter created, of any and all of their departments, agencies, authorities and bureaus (collectively, "Requirements") affecting Theater's Premises or affecting the maintenance, use or occupation of Theater's Premises, whether or not the same involve or require any structural changes or additions in or to Theater's Premises, and without regard to whether or not such changes or additions are required on account of any particular use to which Theater's Premises or any part thereof may be put. Theater also shall comply with any and all provisions and requirements of any document of record or casualty, liability or other insurance policy required to be carried by Theater under the provisions of this Lease.

14.2 Right to Contest. Theater shall have the right to contest the validity of any Requirement or the application thereof. Theater's compliance with any such contested Requirement may be deferred as long as Theater promptly commences and thereafter diligently pursues the resolution of such contest. However, Theater promptly shall comply with any such Requirement, and compliance shall not be deferred or deferred any further if, (i) in City's reasonable estimation, at any time the Premises, or any part thereof, shall be in danger of being forfeited, lost, materially adversely affected or impaired; or (ii) City shall be in danger of being subject to criminal and/or civil liability or penalty by reason of noncompliance therewith. Notwithstanding the foregoing, City shall cooperate with Theater in any such contest to such extent as Theater may reasonably request. Theater shall reimburse City's actual and reasonable costs of such cooperation within 30 days of a statement detailing and providing documentation of such costs.

ARTICLE 15

EQUIPMENT

15.1 Theater shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises, without the prior written consent of City, which consent shall not be unreasonably withheld or delayed, unless such Equipment is promptly replaced by Equipment of at least equal utility and value or is deemed by Theater, in the reasonable exercise of its business judgment, to be no longer necessary or appropriate in connection with the use, maintenance or improvement of the Premises. Theater, however, without City's consent, may remove Equipment at any time and from time to time for repairs, cleaning or other servicing, provided that Theater shall return or reinstall same or replace it to or in the Premises with reasonable diligence.

15.2 Theater shall keep all Equipment in good order and repair and shall replace the same when necessary with items of at least equal utility and value as of the date such Equipment was originally installed at the Premises. Notwithstanding the foregoing, nothing in this Article 15 shall be deemed to require Theater to replace Equipment that Theater and City agree to be no longer necessary or appropriate in connection with the use, maintenance or improvement of the Premises.

ARTICLE 16

DISCHARGE OF LIENS; BONDS

16.1 Except for (a) any Leasehold Mortgage permitted by this Lease; (b) any Subleases permitted by this Lease, or (c) assignment of leases and/or rents or any security interests in Equipment collateral to a Leasehold Mortgage permitted by this Lease, Theater shall not create or cause to be created any lien, encumbrance or charge upon the Facility or the Facility Site or City Facilities or the Connectional Elements or any part thereof or upon the income therefrom or upon any City funds.

16.2 If at any time following Final Completion of the Work any mechanics', laborers' or materialmen's or any other lien, charge or encumbrance caused or created by Theater at any time shall be filed contrary to Section 16.1, then Theater shall cause such liens and claims to be satisfied, removed, or discharged, by bond, payment, or otherwise, within thirty (30) days from the date of the filing thereof; provided, however, that City shall extend the thirty (30) day period if City reasonably determines that such lien or claim cannot be so satisfied, removed, or discharged in such period and that Theater is proceeding diligently to cause such liens or claims to be satisfied, removed, or discharged. Upon Theater' failure to cause such liens or claims to be satisfied, removed, or discharged, City shall have the right, in addition to all other rights and remedies provided under this Lease or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at Theater' sole cost, such cost to include reasonable legal fees. Within ten (10) days of the receipt of a statement from City describing the actual cost of having any such liens satisfied, removed, or discharged, Theater shall reimburse City such amount.

16.3 Notice is hereby given that City shall not be liable for any Theater's Work performed or to be performed at the Premises for Theater or any Subtenant or for any materials furnished or to be furnished at the Premises and that no mechanics' or other lien for Theater's Work or any other obligation of Theater under this Lease or any materials used in or on the Premises shall attach to or affect the estate or interest of City in and to the Premises or any part thereof, or any assets of City. Notice is hereby given that Theater shall not be liable for any City's Work performed or to be performed at the Premises for City or any Subtenant or for any materials furnished or to be furnished at the Premises and that no mechanics' or other lien for City's Work or any other obligation of City under this Lease or any materials used in or on the Premises shall attach to or affect the estate or interest of Theater in and to the Premises or any part thereof, or any assets of Theater.

16.4 Theater shall have no power to do any act or make any contract which may create or be the foundation for any lien, charge, mortgage or other encumbrance upon the estate or assets of City or of any interest of City in the Premises. City shall have no power to do any act or make any contract which may create or be the foundation for any lien, charge, mortgage or other encumbrance upon the estate or assets of Theater or of any interest of Theater in the Premises.

16.5 City shall not create or cause to be created any lien, encumbrance or charge upon Theater's leasehold estate in the Premises or any part thereof or upon the income therefrom. City shall not create or cause to be created any lien, encumbrance or charge upon any assets of Theater or upon the estate, rights or interest of Theater in the Premises or any part thereof.

16.6 If any mechanics', laborers' or materialmen's or any other lien, charge or encumbrance caused or created by City at any time shall be filed contrary to Section 16.5, then City shall cause such liens and claims to be satisfied, removed, or discharged, by bond, payment, or otherwise, within thirty (30) days from the date of the filing thereof; provided, however, that Theater shall extend the thirty (30) day period if Theater reasonably determines that such lien or claim cannot be so satisfied, removed, or discharged in such period and that City is proceeding diligently to cause such liens or

claims to be satisfied, removed, or discharged. Upon City's failure to cause such liens or claims to be satisfied, removed, or discharged as provided above, Theater shall have the right, in addition to all other rights and remedies provided under this Lease or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at Theater's sole cost, such cost to include reasonable legal fees. Within ten (10) days of the receipt of a statement from Theater describing the actual cost of having any such liens satisfied, removed, or discharged, City shall reimburse Theater such amount.

16.7 Nothing in this Lease contained shall be deemed or construed in any way as giving City any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Theater's Premises or any part thereof or any assets of Theater. Notice is hereby given that, to the extent enforceable under applicable law, and except as set forth in the in Articles 5 and 12, above, Theater shall not be liable for any work performed or to be performed in connection with the City's Exclusive Elements for City or any subtenant or for any materials furnished or to be furnished in connection with the City's Exclusive Elements for any of the foregoing, and that no mechanics' or other lien for such work or materials shall attach to or affect the estate or interest of Theater in and to the Premises or any part thereof, or any assets of Theater.

16.8 City shall have no power to do any act or make any contract which may create or be the foundation for any lien, charge, mortgage or other encumbrance upon the estate or assets of Theater or of any interest in Theater's Premises.

ARTICLE 17

REPRESENTATIONS

17.1 Theater. Theater warrants and represents that as of the date of this Lease:

a. It is financially solvent; that it, its employees, agents, and officials, are competent to perform, or cause to be performed, Theater's Work and all other obligations of Theater under this Lease; and

b. It is legally authorized to execute and perform or cause to be performed this Lease under the terms and conditions stated herein; and

c. It shall not knowingly use the services of any Contractor listed in the current list of Non-responsive bidders issued by the Purchasing Agent; and

d. It is not in default at the time of the execution of this Lease, or to the best of its knowledge been deemed by the Purchasing Agent to have been, within five (5) years immediately preceding the date of this Lease, in default, on any contract or loan awarded by City; and

e. It has carefully examined and analyzed the provisions and requirements of this Lease; it has inspected the Facility Site; it was permitted access to any person or information in connection with the Facility Site; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of Theater's Work, the general and local conditions, excluding concealed conditions, and all other matters which in any way may affect Theater's Work or its performance; and the time available to it for such examination, analysis, inspection, and investigation was, to the best of its knowledge, adequate; and

f. To the best of Theater's knowledge, Theater's Work and all obligations under this Lease are feasible of performance in accordance with all applicable provisions and requirements of this Lease, and it can perform, or cause to be performed, Theater's Work in substantial accordance with the provisions and requirements of this Lease; and

g. Except only for those representations, statements, or promises expressly contained or provided for in this Lease, and any Exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, of any kind whatsoever, by City, its officials, agents, or employees, has induced it to enter into this Lease or has been relied upon, including any with reference to: (i) the nature, existence, or location of materials, structures, obstructions, utilities, or conditions, surface or subsurface, which may be encountered at or on the Facility Site; (ii) the nature, quantity, quality or size of any materials, equipment, labor, and other facilities, needed for the performance of Theater's Work; or (iii) the general conditions which may in any way affect Theater's Work or its performance under this Lease, or (iv) any statement or representation of the status of title or environmental condition of the Facility Site or other matters, whether similar or dissimilar to those referred to in (i) through (iii) immediately preceding, affecting or having any connection with this Lease, the negotiation thereof, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith;

h. It was given ample opportunity and time and was hereby requested to review thoroughly all documents forming this Lease prior to execution of this Lease in order that it might request inclusion in this Lease of any statement, representation, promise, or provision which is desired or on which it wished to place reliance; it did so review said documents and either every such statement, representation, promise, or provision has been included in this Lease or else, if omitted, it expressly hereby relinquishes the benefit of any such omitted statement, representation, promise, or provision and it is willing to perform, or cause to be performed, this Lease in its entirety without claiming reliance thereon or making any other claim on account of such omission;

i. No official, employee, or agent of City shall be charged personally by it, with any liability or expenses of defense, or be held personally liable to it under any term or provisions of this Lease, or because of City's execution or attempted execution, or because of any breach hereof.

j. After reasonable inquiry, Theater does not have knowledge of any legal actions, suits, or other legal or administrative proceedings, pending or threatened against Theater or its officers or employees that would in any way affect Theater's ability to perform under this Lease.

k. As of the commencement of Theater's Work, Theater will have obtained all required site plan approvals, Facility permits and licenses necessary for Theater to perform Theater's Work in accordance with this Lease; and

l. That it is not in default at the time of the execution of this Agreement, nor has it received notice that the Purchasing Agent has deemed it to have been, within five (5) years immediately preceding the date of this Lease, in default on any contract with or loan awarded by the City of Chicago.

17.2 City. City represents and warrants that:

a. After reasonable inquiry, City does not have knowledge of, or reason to believe that there are, grounds for the filing of a lien against the Premises;

b. After reasonable inquiry, City does not have knowledge of any pending condemnation or similar proceeding affecting the Premises or any portion thereof;

c. After reasonable inquiry, City does not have knowledge of any legal actions, suits, or other legal or administrative proceedings, pending or threatened against the Premises, or that any such action, suit, proceeding or claim has been threatened or asserted against City.

d. Except for those matters appearing in Title Report, City has granted no leases or license, nor created any tenancies, affecting the Premises and to the City's knowledge there are no parties in possession of any portion of the Facility Site as trespassers or otherwise;

e. After reasonable inquiry, City does not have knowledge of any uncured violations of federal, state or municipal laws, ordinances, orders, regulations, or requirements affecting any portion of the Facility Site;

f. The Facility Site has legal access to abutting streets and roads;

g. After reasonable inquiry, City does not have knowledge of any pending or threatened governmental or private proceedings which would impair or result in the termination of access from the Premises to abutting public highways, streets, and roads;

h. City has provided Theater with complete copies of all environmental reports, test results and inspections conducted by or at the request of City or that are in City's possession with respect to the Facility Site but City makes no representation of the accuracy or completeness of any information or conclusion contained therein;

i. After reasonable inquiry and to City's knowledge there are no underground storage tanks located on the Facility Site;

j. As of the commencement of City's Work, City had obtained all required site plan approvals, Facility permits and licenses necessary for City to construct City's Improvements in accordance with this Lease for Theater's intended use;

k. City has no knowledge of any pending or deferred special assessments affecting the Facility Site;

l. [Intentionally omitted.]

m. After reasonable inquiry, and to City's knowledge, City believes that it and the Facility Site are in full compliance with (1) the terms and conditions of all legally enforceable easements, covenants and conditions of record; and (2) all requirements imposed upon City and the Facility Site by such instruments;

n. It is legally authorized to execute and perform or cause to be performed this Lease under the terms and conditions stated herein;

o. It has carefully examined and analyzed the provisions and requirements of this Lease; it has inspected the Millennium Project Property and the Facility Site; it was permitted access to any person or information in connection with its investigation of the Facility; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of the City's Work, the general and local conditions, excluding concealed conditions, and all other matters which in any way may affect the City's Work or its performance, and the time available to it for such examination, analysis, inspection and investigation was adequate.

p. To City's knowledge the City's obligations under this Lease are feasible of performance in accordance with all applicable provisions and requirements, including this Lease; and it has performed, or caused to be performed, the City's Work in substantial accordance with the provisions and requirements of this Lease;

q. Except only for those representations, statements, or promises expressly contained or provided for in this Lease, and any Exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, of any kind whatsoever, by Theater, its officials, agents, or employees, has induced it to enter into this Lease or has been relied upon, including any with reference to: (i) the nature, existence, or location of materials, structures, obstructions, utilities, or conditions, surface or subsurface, which may be encountered at or on the Millennium Project Property or the Facility Site; (ii) the nature, quantity, quality or size of any materials, equipment, labor, and other facilities, needed for the performance of City's Work; (iii) the general conditions which may in any way affect the City's Work or its performance; (iv) any other

matters, whether similar to or different from those referred to in (i) through (iii) immediately above, affecting or having any connection with this Lease, the negotiation thereof, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith;

r. It was given ample opportunity and time and was hereby requested to review thoroughly all documents forming this Lease prior to execution of this Lease in order that it might request inclusion in this Lease of any statement, representation, promise, or provision which is desired or on which it wished to place reliance; it did so review said documents and either every such statement, representation, promise, or provision has been included in this Lease or else, if omitted, it expressly hereby relinquishes the benefit of any such omitted statement, representation, promise, or provision and it is willing to perform, or cause to be performed, this Lease in its entirety without claiming reliance thereon or making any other claim on account of such omission; and

s. No official, employee, or agent of Theater shall be charged personally by it, with any liability or expenses of defense or be held personally liable to it under any term or provisions of this Lease, or because of the Theater's execution or attempted execution, or because of any breach hereof.

ARTICLE 18

[INTENTIONALLY OMITTED.]

ARTICLE 19

INDEMNIFICATION

19.1 Theater's Indemnification of City. In addition to the indemnification in Section 5.10, Theater shall indemnify and save City and any agent, employee, and officer of City (each a "City Indemnified Party") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects' and attorneys' fees, court costs and disbursements, which may be imposed upon or incurred by or asserted against any City Indemnified Party by reason of personal injury or property damage arising from Theater's performance or non-performance of any obligation incurred, or its exercise or enjoyment of any right granted, under this Lease, including any of the following:

a. any demolition or razing or construction of the Facility or any other work or thing done in, on or about the Premises or any part thereof by Theater or its agents, employees, subtenants, licenses, grantees or invitees;

b. any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof by Theater or its agents, employees, subtenants, licenses, grantees or invitees;

c. any failure on the part of Theater to pay Rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Theater's part to be performed or complied with beyond any applicable grace period;

d. any failure on the part of Theater to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Theater's Contracts, Subleases or other contracts and agreements affecting the Premises on Theater's part to be kept, observed or performed; and

e. any contest permitted pursuant to the provisions of Sections 4.5, 14.2 or 16.9 of this Lease;

except to the extent that such is the result of the City Indemnified Party's negligent, willful and wanton, or intentionally tortuous conduct.

19.2 Insurance. The obligations of Theater and City under this Article 19 shall not be affected in any way by the existence or absence of insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

19.3 Defense and Settlement. If any claim, action or proceeding is made or brought against any City Indemnified Party against which it is indemnified pursuant to Section 19.1 hereof, then, upon demand by City, Theater shall appear and resist or defend such claim, action or proceedings in City's name, if necessary, by the attorneys for Theater or its insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as City shall approve, which approval shall not be unreasonably withheld or delayed. Theater shall enter into no settlement of any such claim, action or proceeding without City's prior written approval, which approval shall not be unreasonably withheld or delayed.

19.4 City Indemnification of Theater. In addition to the indemnification in Section 5.7, City shall indemnify and save Theater, Leasehold Mortgagee and any agent, employee, or officer of Theater and Leasehold Mortgagee (each a "Theater Indemnified Party") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable engineers', architects' and attorneys' fees, court costs and disbursements, which may be imposed upon or incurred by or asserted against any Theater Indemnified Party by reason of personal injury or property damage arising from City's performance or non-performance of any obligation incurred, or its exercise or enjoyment of any right granted, under this Lease including any of the following:

a. any demolition or razing or construction of the Facility or any other work or thing done in, on or about the Premises or any part thereof by City or its agents, employees, subtenants, grantees, licensees or invitees;

b. any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof by City or its agents, employees, subtenants, grantees, licensees or invitees;

c. any failure on the part of City to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on City's part to be performed or complied with beyond any applicable grace period; and

d. any failure on the part of City to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the City's Contracts, Subleases or other contracts and agreements affecting the Premises on City's part to be kept, observed or performed;

except to the extent that such is the result of Theater Indemnified Party's negligent, willful and wanton, or intentionally tortuous conduct.

19.5 Defense and Settlement. If any claim, action or proceeding is made or brought against any Theater Indemnified Party against which it is indemnified pursuant to Section 19.4 hereof, then, upon demand by Theater, City shall appear and resist or defend such claim, action or proceedings in Theater's name, if necessary, by the attorneys for City or its insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Theater shall approve, which approval shall not be unreasonably withheld or delayed. City shall enter into no settlement of such claim action or proceeding without Theater's prior written approval, which approval shall not be unreasonably withheld or delayed.

19.6 Survival. The provisions of this Article 19 shall survive the Expiration Date.

ARTICLE 20

RIGHT OF INSPECTION

20.1 By City. After reasonable notice from City, Theater shall permit City and City's agents or representatives to enter the Theater's Exclusive Elements and during Theater's Season, the Seasonal Elements, during reasonable hours for the purpose of (a) inspecting the Premises; (b) performing City's obligations hereunder; (c) determining whether or not Theater is in compliance with its obligations hereunder; and (d) in the case of an emergency (i.e., a condition presenting imminent danger to the health or safety of Persons or to property), or following an Event of Default, making any necessary repairs to the Premises and performing any work therein permitted by City

under this Lease, provided that in the case of an emergency City shall make a reasonable attempt to communicate with Theater to alert Theater to the necessary repair.

20.2 Non-Implication of City. Nothing in this Article 20 shall imply any duty upon the part of City to do any work, and performance of any work by City shall not constitute a waiver of Theater's default in failing to perform the same. City shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Theater or any Subtenant by reason of making such repairs or the performance of any such work or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof, and the obligations of Theater under this Lease shall not be affected thereby. To the extent that City undertakes such work or repairs and such work or repairs shall require interruption of any services to or access of Theater or any Subtenant or the entry into any space covered by a Sublease, such work or repairs shall be commenced and completed with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to unreasonably interfere with the conduct of business in such space.

20.3 By Theater. After reasonable notice from Theater, City shall permit Theater and Theater's agents or representatives to enter the City's Exclusive Elements during reasonable hours for the purpose of (a) inspecting the City's Exclusive Elements; (b) performing Theater's obligations under this Lease; (c) determining whether or not City is in compliance with its obligations under this Lease; and (d) in the case of an emergency (i.e., a condition presenting imminent danger to the health or safety of Persons or to property), or following a City Event of Default, making any necessary repairs to the City's Exclusive Elements and performing any work therein required by City under this Lease, provided that in the case of an emergency Theater shall make a reasonable attempt to communicate with City to alert City to the necessary repair.

20.4 Non-Implication of Theater. Nothing in this Article 20 shall imply any duty upon the part of Theater to do any work, and performance of any work by Theater shall not constitute a waiver of City's default in failing to perform the same. Theater shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of City or any other user or occupant of the Facility by reason of making such repairs or the performance of any such work or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof, and the obligations of City under this Lease shall not be affected thereby. To the extent that Theater undertakes such work or repairs and such work or repairs shall require interruption of any services to or access of City or any other user or occupant of the Facility or the entry into any space covered by this Lease, such work or repairs shall be commenced and completed with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to unreasonably interfere with the conduct of business in such space.

ARTICLE 21

RIGHT TO PERFORM COVENANTS

21.1 If Theater at any time shall fail (a) to pay any Imposition in accordance with the provisions of this Lease, or (b) to take out, pay any insurance premiums for, maintain or deliver any of the insurance policies in the manner provided for herein, or (c) to pay any Rental hereunder as and when due, or (d) to perform any other act on its part required to be made or performed hereunder, then at any time after furnishing fifteen (15) days prior notice to Theater of any Event of Default, City, without waiving or releasing Theater from any obligation of Theater contained in this Lease or waiving or releasing any rights of City hereunder, at law or in equity, may (but shall be under no obligation to) (i) pay any Imposition, insurance premium, item of Rental or any other sums, costs, expenses, charges, payments or deposits payable by Theater hereunder, and (ii) perform any other act on Theater's part required to be made or performed as provided in this Lease, and (iii) enter upon the Premises for such purpose and take all such action thereon as reasonably may be necessary therefor. Notwithstanding the foregoing, as long as the Leasehold Mortgage is in effect, City will not exercise its rights under this section unless and until it has given Leasehold Mortgagee at least sixty (60) days' advance notice of its intention so to act and the Theater's Work has not been corrected, replaced or retrofitted within such time period, provided however, that in the event Leasehold Mortgagee needs to obtain possession of the Premises in order to effectuate such cure, the expiration of such period shall be tolled for so long as Leasehold Mortgagee is actively and continuously attempting to obtain possession of the Premises, whether through judicial foreclosure or otherwise, but in no event longer than six (6) months.

21.2 All sums paid by City and all costs and expenses actually incurred by City in connection with the performance of any such obligation, together with interest thereon at the Prime Rate from the respective dates of City's making of each such payment or incurring of each such sum, cost, liability, expense, charge, payment or deposit until the date of actual repayment to City, shall be paid by Theater to City on demand as Rental. City shall not be limited in the proof of any damages which City may claim against Theater arising out of or by reason of Theater's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but City also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Premises or any part thereof, which damage or destruction was required to be insured against hereunder.

21.3 If City at any time shall (a) fail to take out, pay any insurance premiums for, maintain or deliver any of the insurance policies in the manner provided for herein, or (b) fail to perform any other act on its part required to be made or performed hereunder, then at any time after furnishing fifteen (15) days prior notice to City of a City Event of Default, Theater, without waiving or releasing City from any obligation of City contained in this Lease or waiving or releasing any rights of Theater hereunder, at law or in equity, may (but shall be under no obligation to) (i) pay any insurance

premium, or any other sums, costs, expenses, charges, payments or deposits payable by City hereunder, or (ii) perform any other act on City's part required to be made or performed as provided in this Lease, and (iii) enter upon the Premises for such purpose and take all such action thereon as reasonably may be necessary therefor.

21.4 All sums paid by Theater and all costs and expenses incurred by Theater in connection with the performance of any such obligation, together with interest thereon at the Prime Rate from the respective dates of Theater's making of each such payment or incurring of each such sum, cost, liability, expense, charge, payment or deposit until the date of actual repayment to Theater, shall be paid by City to Theater on demand. Theater shall not be limited in the proof of any damages which Theater may claim against City arising out of or by reason of City's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Theater also shall be entitled to recover, as damages for such breach, the amount of any loss and damage and the costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Premises or any part thereof, which damage or destruction was required to be insured against hereunder.

ARTICLE 22

NO ABATEMENT

Except as may be otherwise expressly provided herein, there shall be no abatement, diminution or reduction of (i) Rental payable by Theater hereunder or (ii) the other obligations of Theater hereunder or (iii) of the payments required by City under Article 2 of this Lease, or (iv) the other obligation of City hereunder under any circumstances. The parties intend that the obligations of Theater and City hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease.

ARTICLE 23

THEATER'S PERMITTED USE

Subject to the provisions of law and this Lease, Theater shall be permitted to occupy the Premises in accordance with the Certificates of Occupancy for the Premises in effect from time to time during the Term for use as a theater and related support and meeting facilities and for no other use or purpose (the "Permitted Use"). City acknowledges that Theater intends to permit the Premises to be used from time to time by various music, dance, theater and other fine arts organizations, both affiliated and unaffiliated with Theater. Such use may be by independent arrangement between Theater and the particular users pursuant to booking arrangements authorized by Section 10.1(d), and City acknowledges and agrees that the use of such booking arrangements are fully consistent with

this Lease. Notwithstanding the foregoing, Theater shall not cause or allow the Seasonal Elements to be used for performances that are defamatory or violate any copyright or infringe upon the literary or any other rights of any Person, including the right to privacy of any Person or which are in violation of any Requirement.

ARTICLE 24

EVENTS OF DEFAULT AND REMEDIES

24.1 Events of Default. To the extent permitted by law, each of the following events shall be an "Event of Default" hereunder:

- a. if Theater shall make in writing any material misrepresentation to the City;
- b. if Theater shall fail to make any payment of Rental other than Base Rent required to be paid by Theater hereunder within twenty (20) business days after notice thereof from City to Theater;
- c. if Theater shall fail to observe or perform one or more of the other material terms, conditions, covenants or agreements of this Lease and such failure shall not be cured by Theater within thirty (30) days after written notice thereof by City to Theater specifying such failure (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot either by their nature or by reason of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Theater shall have commenced curing the same within such thirty (30) day period and shall continuously prosecute the same to completion with reasonable diligence, subject to Unavoidable Delays); provided, however, that where there exists an immediate and substantial risk of serious personal injury or property damage, it shall be an Event of Default hereunder if Theater fails to undertake to cure such Event of Default immediately and to continuously prosecute the same to completion;
- d. if Theater shall admit, in writing, that it is unable to pay its debts as such debts become due;
- e. if Theater shall make an assignment for the benefit of creditors;
- f. if Theater shall file a voluntary petition under Title 11 of the United States Bankruptcy Code, as amended from time to time, or if such petition is filed against Theater and an order for relief is entered, or if Theater shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce to or

suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Theater, or of all or any substantial part of its properties or of the Premises or any interest therein of Theater, or if Theater shall take any corporate (or partnership) action in furtherance of any action described in Sections 24.1(d), (e) or (f) hereof;

g. if within ninety (90) days after the commencement of any proceeding against Theater seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed; or if, within one hundred fifty (150) days after the appointment, without the consent or acquiescence of Theater, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Theater or of all or any substantial part of its properties or of the Premises or any interest therein of Theater, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within one hundred fifty (150) days after the expiration of any such stay, such appointment shall not have been vacated;

h. whether or not Rent is being paid, if Theater shall abandon the Premises or any substantial portion thereof, which abandonment, in City's reasonable opinion, is deleterious to the value or reputation of the Facility Site or the Facility;

i. if this Lease or the estate or interest of Theater hereunder or any portion thereof (whether by operation of law or otherwise) shall be assigned, subleased, transferred, mortgaged or encumbered without compliance with the provisions of this Lease applicable thereto;

j. if a levy under execution or attachment shall be made against Theater or its interest in the Premises or any part thereof and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) days; or

k. if Theater shall fail to perform any of its material obligations related to Theater's Work including, but not limited to, the following: (1) failure to commence Theater's Work, or to cause Theater's Work to be commenced, at the time(s) specified in this Lease due to a reason or circumstance within Theater's reasonable control; (2) failure to perform Theater's Work, or to cause Theater's Work to be performed with sufficient personnel and equipment or with sufficient material to ensure the completion of Theater's Work within the specified time due to a reason or circumstance within Theater's reasonable control; (3) failure to perform Theater's Work, or to cause Theater's Work to be performed in material conformity with the Final Plans, Specifications and Work Plan or with this Lease; (4) failure to promptly re-perform, or to cause to be re-performed, within a reasonable time Theater's Work that was rejected as not in conformity with the Final Plans Specifications and Work Plan or with this Lease; and (5) discontinuance of Theater's Work for reasons within Theater's reasonable control. For purposes of this Section, Theater's Work that is performed by Theater's Contractors shall be deemed to be within the reasonable control of Theater.

l. if Theater shall fail to pay liquidated damages as provided in Subsection 2-92-330(b) of the Municipal Code of Chicago, provided, however, that a failure to meet the goal of 50 percent for hours worked by actual residents of the City as set forth in Subsection 2-92-330(a) shall not constitute an Event of Default.

24.2 Remedies. If an Event of Default shall occur, City may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce the performance or observance by Theater of the applicable provisions of this Lease and/or to recover damages for breach thereof. The remedies of City under the terms of this Lease are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

a. If any Event of Default described in Sections 24.1(c) through (k) shall occur, City, at any time thereafter, at its option, may give notice to Theater stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall not be less than thirty (30) days after the giving of such notice, and if, on the date specified in such notice (or in the case of a default under Section 24.1(k) where the default either by its nature or by reason of Unavoidable Delays or City Delays cannot reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no termination shall be effective so long as Theater shall have commenced curing the same within such thirty (30) day period and shall continuously prosecute the same to completion with diligence, subject to Unavoidable Delays or City Delays), Theater shall have failed to cure the Default which was the basis for the Event of Default, then, subject to Article 10 of this Lease, this Lease and the Term and all rights of Theater under this Lease shall expire and terminate as if the date specified in the notice given pursuant to this Section 24.3 were the date herein definitely fixed for the expiration of the Term, and Theater immediately shall quit and surrender the Premises and the provisions of Article 32 shall apply, but Theater shall remain liable as hereinafter provided. If such termination is stayed by order of any court having jurisdiction over any proceeding described in Section 24.1(f) or 24.1(g) hereof, or by federal or state statute, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Theater or Theater as debtor-in-possession shall fail to assume Theater's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if said trustee, Theater or Theater as debtor-in-possession shall fail to provide adequate protection of City's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Theater's obligations under this Lease as provided in Section 24.15 hereof, then City, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, subject to Article 10 of this Lease, to terminate this Lease on ten (10) days' notice to Theater, Theater as debtor-in-possession or said trustee, and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid, and Theater, Theater as debtor-in-possession or said trustee, as the case may be, shall immediately quit and surrender the Premises as aforesaid.

b. If an Event of Default described in Sections 24.1(b) shall occur, or this Lease shall be terminated as provided in Section 24.2(a), City, without notice, may dispossess Theater by appropriate legal proceedings and the provisions of Article 32 shall apply.

24.3 Remedies on Termination. If this Lease shall be terminated as provided in Section 24.2(a) hereof and/or Theater shall be dispossessed by appropriate legal proceedings as provided in Section 24.2(b) hereof:

a. Theater shall pay to City all Rental payable by Theater under this Lease to the date upon which this Lease and the Term shall have expired and come to an end or to the date of reentry upon the Premises by City, as the case may be; and if Theater's Work is not completed in accordance with this Lease at the time of such termination, the actual cost incurred by City to complete such Theater's Work (including the repair or replacement of incomplete or defective Theater's Work) shall be deemed to be additional Rental due and payable to City as of the date of termination, and such obligation shall survive the termination.

b. City may repair and alter the Premises in such manner as City reasonably may deem necessary or advisable without relieving Theater of any liability under this Lease or otherwise affecting any such liability, or let or relet the Premises or any part thereof for the whole or any part of the remainder of the Term or for a longer period in City's name or as agent of Theater, and out of any rent and other sums collected or received as a result of such reletting City shall: (i) first, pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing and repairing and/or altering the Premises, or any part thereof, and the cost and expense of removing all Persons and property therefrom, including in such costs reasonable brokerage commissions, legal expenses and attorneys' fees, court costs and disbursements; (ii) second, pay to itself the cost and expense sustained in securing any new occupants, including in such costs reasonable brokerage commissions, legal expenses and attorneys' fees, court costs and disbursements and other expenses of preparing the Premises for reletting, and, if City shall maintain and operate the Premises, the cost and expense of operating and maintaining the Premises; and (iii) third, pay to itself any balance remaining. To the extent permitted by law, City in no way shall be responsible or liable for any failure to relet the Premises or any part thereof or for any failure to collect any rent due on any such reletting, and no such failure to relet or collect rent shall operate to relieve Theater of any liability under this Lease or to otherwise affect any such liability;

c. City may declare Theater "non-responsive" in future contracts to be awarded by City, or take such other administrative actions that the City shall deem appropriate because of such Event of Default.

24.4 Theater Not Relieved of Liability. No termination of this Lease pursuant to Section 24.3(a) or (b) hereof, and no taking possession of and/or reletting the Premises, or any part thereof, pursuant to this Article, shall relieve Theater of its liabilities and obligations hereunder, except as

specifically provided herein, all of which shall survive such expiration, termination, repossession or reletting except as otherwise specifically provided.

24.5 Waiver. To the extent not prohibited by law, Theater hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 24. Theater shall execute, acknowledge and deliver any instruments which City may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

24.6 [Intentionally Deleted].

24.7 Periodic Actions by City. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Theater to City pursuant to this Article 24, may be brought by City at any time and from time to time at City's election, and nothing herein contained shall be deemed to require City to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Theater and termination.

24.8 Damages in Bankruptcy. Nothing contained in this Article 24 shall limit or prejudice the right of City to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 24.

24.9 Receipt After Termination. No receipt of moneys by City from Theater after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Theater, or operate as a waiver of the right of City to enforce the payment of Rental payable by Theater hereunder or thereafter falling due, or operate as a waiver of the right of City to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, or any part thereof or interest therein, City may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupancy of the Premises or, at the election of City, on account of Theater's liability hereunder.

24.10 Waiver of Notice of Re-Entry; Redemption. Except as otherwise expressly provided herein or as prohibited by applicable law, Theater hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Theater, for and on behalf of itself and all persons claiming through or under Theater, also

waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or to restore the operation of this Lease in case Theater shall be dispossessed by a judgment or by warrant of any court or judge or in case of reentry or repossession by City or in case of any expiration or termination of this Lease, and City and Theater waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of City and Theater, Theater's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter," "re-enter," "entry" or "reentry," as used in this Lease, are not restricted to their technical legal meaning.

24.11 City Events of Default. Each of the following events shall be a "City Event of Default" hereunder:

a. if City shall fail to make any payment required to be paid by City hereunder within the time stated in this Lease;

b. if City shall fail to observe or perform one or more of the other material terms, conditions, covenants or agreements of this Lease and such failure shall not be cured by City within thirty (30) days after written notice thereof by Theater to City specifying such failure (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot either by their nature or by reason of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no City Event of Default shall be deemed to exist as long as City shall have commenced curing the same within such thirty (30) day period and shall continuously prosecute the same to completion with reasonable diligence, subject to Unavoidable Delays), provided, however, that where there exists an immediate and substantial risk of serious personal injury or property damage, it shall be an Event of Default hereunder if City fails to undertake to cure such Event of Default immediately and to continuously prosecute the same to completion; and

c. If City shall make any material misrepresentation to Theater.

24.12 Election; No Termination of City's Leasehold of Facility. If a City Event of Default shall occur, Theater may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce the performance or observance by City of the applicable provisions of this Lease and/or to recover damages for breach thereof. In no event shall the City's leasehold interest in the Facility be terminated because of any City Event of Default or otherwise.

24.13 Periodic Actions by Theater. Suit or suits for the recovery of damages hereunder or other sums payable by City to Theater pursuant to this Article 24, may be brought by Theater at any time and from time to time at Theater's election, and nothing herein contained shall be deemed to require Theater to await the date whereon this Lease or the Term would have expired had there been no City Event of Default by City and termination.

24.14 No Waiver. No failure by either party to insist upon the strict performance by the other party of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no payment or acceptance of full or partial Rental or Expenses during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or completed with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

24.15 Injunctive Relief. In the event of any breach or threatened breach by either party of any of the covenants, agreements, terms or conditions contained in this Lease, the other party shall be entitled to request a court to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, as though reentry, summary proceedings and other remedies were not provided for in this Lease.

24.16 Remedies Cumulative. Each right and remedy of City and Theater provided for in this Lease shall be cumulative.

24.17 Adequate Protection. If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Theater or Theater's interest in this Lease, in any proceeding which is commenced by or against Theater under the present or any future applicable federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, City shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect City's right, title and interest in and to the Premises or any part thereof and/or adequately assure the complete and continuous future performance of Theater's obligations under this Lease.

ARTICLE 25

NOTICES

25.1 Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as a "Notice") shall or may be given to or served upon either of the parties, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and shall not be effective for any purpose unless given or served as follows:

a. if given by City, by a nationally recognized overnight courier service, personal delivery or by mailing the same to Theater by certified or registered mail, postage prepaid, return

receipt requested, addressed to Theater, if prior to Theater's notifying City in writing of its occupancy of the Premises, at 203 N. LaSalle Street, Mezzanine Level, Chicago, IL 60601 and at the Premises, thereafter, with a copy thereof to Richard L. Ingram, Esq., Shefsky & Froelich Ltd., 444 N. Michigan Avenue, Suite 2500, Chicago, IL 60611, in both instances, and/or to such other address(es) and attorneys as Theater may from time to time designate by Notice given to City in the manner set forth below, except that at no time shall City be required to give, in the aggregate, more than four Notices or copies thereof, including the notices described in Section 25.3; and

b. if given by Theater, by actual personal delivery, including delivery by a nationally recognized overnight courier service or by mailing certified or registered mail, postage prepaid, return receipt requested to City at Office of the Mayor, Room 500 City Hall, 121 North LaSalle Street, Chicago 60602 with copies thereof to: (i) Project Director, Millennium Project, c/o Commissioner of Transportation, 30 N. LaSalle Street, Suite 1100, Chicago, Illinois 60603; (ii) Commissioner of Transportation, 30 North LaSalle Street, Room 1100, Chicago, Illinois 60602; and (iii) Corporation Counsel, Room 600 City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and/or to such other address(es) and attorneys as City may from time to time designate by Notice given to Theater in the manner set forth above except that at no time shall Theater be required to give, in the aggregate, more than four Notices or copies thereof.

25.2 For notice given to City or Theater, Notice shall be deemed to have been given or served upon receipt or refusal of receipt if delivered personally. In addition, for Notices to Theater only, Notice delivered by a nationally recognized overnight courier service, is deemed delivered one (1) Business Day after deposit with same, or if mailed, on the second Business Day after the same shall have been deposited in the United States mail in the manner aforesaid.

25.3 If requested in writing by Theater, City shall also provide a copy of any and all Notices to not more than two holders of a Leasehold Mortgage. Such request shall be made in the manner provided in Section 25.1 and shall specify an address to which Notices shall be given. Any Notice to such a party shall also be given contemporaneously to such holder in the manner herein specified.

ARTICLE 26

THEATER'S FINANCIAL CAPABILITIES

26.1 The cost of Theater's Work ("Construction Cost") is set forth on the Project Budget as adjusted by the terms of this Lease. Prior to the Theater entering the Facility Site to commence Theater's Work, Theater shall submit to the City, and obtain the City's approval of the following

a. A description disclosing in sufficient detail the sources of funds that the Theater shall use to pay such costs, including any equity and contributions from fundraising efforts. The City's right to approve the sources of funding shall be limited to a determination of the

consistency of such sources and their conditions with the terms of this Lease, and to confirm that such sources are conditioned only on commercially reasonable and customary requirements for disbursement of funds of this type; and

b. To the extent the Theater elects to fund the Construction Cost with borrowed funds, whether reflected on the Project Budget or otherwise:

(i) Evidence that funds in the borrowed amount have been deposited in a construction escrow, the terms of which provide for their disbursement to or on behalf of the Theater for the Theater's Work as provided in this Lease, the City's right to approve such escrow shall be limited to a determination of the consistency of the escrow with the terms of this Lease and to confirm that disbursements are conditioned only on commercially reasonable and customary requirements for disbursement of borrowed funds of this type; or

(ii) A written loan commitment or copies of executed loan documents ("Commitment") by one or more banking corporations authorized to do business in the State of Illinois having a combined net worth of at least \$100,000,000 or other party acceptable to City (the "Lender"), which Commitment shall specify the amount of the borrowed funds, the length of the term and the applicable interest rate, and as applicable, the provision of a credit facility in support of any bond issuance. The Commitment shall have been duly accepted by the Theater and may provide for the issuance by the Lender, subject to the conditions of the Commitment, of one or more letters of credit to secure the payment of the principal of and interest on revenue bonds ("Bonds") to be issued on behalf of the Theater by the Illinois Development Finance Authority or another issuer (the "Issuer") in an aggregate principal amount of up to \$35,000,000 to fund Construction Costs. Once the Commitment has been approved by the City, the City shall also be entitled to review and approve the terms of any loan agreement regarding the borrowed funds ("Loan Agreement") to be executed by the Theater and its lender, and a resolution of the Issuer authorizing the issuance of the Bonds on behalf of the Theater. The City's right to approve the Commitment, the Loan Agreement, and the resolution shall be limited to a determination of the consistency of such documents and their conditions with the terms of this Lease, and to confirm that such items are conditioned only on commercially reasonable and customary requirements for disbursement of funds of this type.

c. An opinion of the Theater's Construction Manager in form and substance reasonably satisfactory to the City that the amounts deposited in the escrow or the net proceeds of the Bonds, together with other available funds of the Theater, will provide the Theater with an amount sufficient to permit the Facility to be built in accordance with the Final Plans, Specifications and Work Plan.

In the event that the Theater shall participate in the change, amendment or substitution of any item submitted and approved under this Section 26.1, the Theater shall obtain the City's approval of such

change, amendment, or substitution prior to its becoming effective and the City's right of approval shall be limited as provided in this Section.

ARTICLE 27

SUBORDINATION; ATTORNMENT

27.1 City's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Leasehold Mortgage now or hereafter placed upon Theater's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Theater's interest in this Lease.

27.2 During the Term, City shall not sell, transfer, assign or otherwise hypothecate its interest in the Facility Site or the Premises, except to a governmental authority or other entity as authorized by State statute and constitution, or as to City's interest in this Lease, except as provided in Section 2.3, above.

ARTICLE 28

ENVIRONMENTAL MATTERS

28.1 a. "Claim" shall mean and include any demand, cause of action, proceeding or suit and the results thereof (i) for damages (actual or punitive), losses, injuries to person or property, damages to natural resources, fines, penalties, expenses, liabilities, interest, contribution or settlement (including, without limitation, attorneys' fees, court costs and disbursements), (ii) for the costs of site investigations, feasibility studies, information requests, health or risk assessments, or Response actions, and (iii) for enforcing insurance, contribution, or indemnification agreements.

b. "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental matters, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and Radon Gas and Indoor Air Quality

Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; and the Environmental Protection Act of Illinois ("IEPA"), Ill. Rev. Stat. ch. 111, para. 1001 et seq., as well as their implementing regulations and guidelines. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate environmental matters.

c. "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product, or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs and other substances regulated under the TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 et seq.; industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA and any other substance, pollutant or contaminant regulated under any other Environmental Laws as hazardous or special waste.

d. "Manage Hazardous Materials" means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

e. "Release of Hazardous Materials" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migration from adjacent property or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA at 42 U.S.C. §9601(8).

f. "Environmental Response" shall mean action taken in compliance with Environmental Laws to correct, remove, remediate, remedy cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

28.2 Theater covenants that from and after the Commencement Date Theater and its contractors (a) shall at all times conduct all its operations in compliance with all Environmental Laws; (b) shall not Manage any Hazardous Materials on Theater's Premises, nor conduct nor authorize the same, including installation of any underground storage tanks, without prior written disclosure to and approval of City; (c) shall not take any action that would subject Theater's Premises to permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (d) shall not dispose of Hazardous Materials; (e) shall not discharge Hazardous Materials into drains or sewers; (f) shall not cause or allow the Release of any Hazardous Materials on, to or from Theater's Premises; and (g) shall at its own cost arrange for the lawful transportation and off-site disposal of all Hazardous Materials that it generates. Notwithstanding the foregoing, Theater shall

not be liable for, nor shall it indemnify any third party for, any conditions existing prior to the Commencement Date which constitute, or might constitute a violation of Environmental Laws, nor will it be responsible for any Release or subsurface migration of Hazardous Materials unless such release or migration was caused by the Theater or its Contractors.

28.3 During the term of this Lease, Theater shall promptly provide City with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Illinois Environmental Protection Agency or other federal, state or local agency or authority or any other entity or individual, concerning (a) any Release of a Hazardous Material on, to or from the Premises; (b) the imposition of any lien on the Premises; or (c) any alleged violation of or responsibility under Environmental Laws. City and City's employees shall have the right to enter Theater's Premises or prior written notice during regular (non-performance) business hours and conduct appropriate inspections or tests in order to determine Theater's compliance with Environmental Laws.

28.4 Upon written request by City, Theater shall provide City with the results of available reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws and with any other applicable documents to demonstrate that Theater complies with all Environmental Laws relating to Theater's Premises.

28.5 If Theater's Management of Hazardous Materials at Theater's Premises (a) gives rise to liability or to a Claim under any Environmental Law, (b) causes a significant public health effect, or (c) creates a nuisance, Theater shall promptly take all applicable action to effect and complete all Environmental Responses required. City (or any Leasehold Mortgagee if so permitted by applicable loan documents) shall have the right, but not the obligation, after providing Theater with notice and a reasonable opportunity to cure, to enter onto the Premises or to take such other actions as it deems necessary or advisable to perform any and all Response action(s). All costs and expenses incurred by City in the exercise of any such rights shall be payable by Theater upon demand.

28.6 Subject to the last sentence of Section 28.2, above, Theater shall indemnify, defend and hold harmless City, its beneficiaries, any Leasehold Mortgagee, managing agents of Theater's Premises, and their respective agents, partners, officers, directors and employees from all Claims suffered or incurred by any of the foregoing arising from or attributable to (a) any breach by Theater or its Contractors of any of its warranties, representations or covenants in this Section; (b) noncompliance of Theater's Premises or Theater or its Contractors with any Environmental Laws; (c) any actual or alleged illness, disability, injury, or death of any person in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials or other substances or conditions present at Theater's Premises; and (d) Hazardous Materials Managed or Released by Theater upon the Premises or the Millennium Project Property. In the event any Claims or other assertion of liability shall be made against City for which City is entitled to indemnity hereunder, City promptly

shall notify Theater of such Claim or assertion of liability and thereupon Theater shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. City, at its option, may defend itself as it reasonably deems necessary or advisable, and all reasonable costs and expenses incurred by City in the exercise of such defense shall be payable by Theater upon demand. Theater's obligations hereunder shall survive the termination or expiration of this Lease.

28.7 City warrants and represents to Theater that a Phase II Environmental Site Assessment was prepared by Carnow, Conibear & Assoc., Ltd. and dated November 7, 1987 and that a copy of the Phase II has been provided to Theater. City shall, at its expense, take all action necessary to ensure that on the Commencement Date the Facility Site is safe for use and occupancy.

ARTICLE 29

GOVERNING LAW, JURISDICTION, SERVICE OF PROCESS

29.1 Governing Law. This Lease shall be governed in accordance with the laws of the State of Illinois.

29.2 Consent to Service of Process and Jurisdiction. All judicial proceedings brought against Theater or City with respect to this Lease may be brought in (1) any court of the State of Illinois of competent jurisdiction and (2) any Federal court of competent jurisdiction having situs within the boundaries of the Federal court district of the Northern District of Illinois. By execution and delivery of this Lease, Theater and City each accepts, for itself and in connection with its properties, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts. Theater hereby designates and appoints the law firm of Shefsky & Froelich Ltd. as its agent in Chicago, Illinois to receive on its behalf service of all process in any such proceedings in such court, such service being hereby acknowledged by such representative to be effective and binding service in every respect. Said agent may be changed only upon the giving of written notice by Theater to City of the name and address of a new Agent for service of process with an office for receiving service within the corporate limits of City of Chicago. Theater irrevocably waives any objection (including without limitation any objection of the laying of venue or based on the grounds of forum nonconveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Lease in the jurisdiction set forth above. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of City to bring proceedings against Theater or of Theater to bring proceedings against City in the courts of any other jurisdiction.

ARTICLE 30

ESTOPPEL CERTIFICATES BY CITY AND THEATER

30.1 Estoppel Certificates By Theater. At any time and from time to time upon not less than ten (10) days' prior written notice by City, Theater shall execute, acknowledge and deliver to City or any other party specified by City a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting the Rental has been paid, and stating whether or not to the best knowledge of Theater (a) there is a continuing Default or Event of Default by City in the performance or observance of any covenant, agreement or condition contained in this Lease to be performed or observed by City, or (b) there shall have occurred any event which, with the giving of notice or passage of time or both, would become such a Default or Event of Default and, if so, specifying each such Default or Event of Default or occurrence of which Theater may have knowledge. Such statement may be relied upon by any prospective successor to City's interest in this Lease.

30.2 Estoppel Certificates By City. At any time and from time to time upon not less than ten (10) days' prior notice by Theater, City shall execute, acknowledge and deliver to Theater or any other party specified by Theater a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting the Rental has been paid, and stating whether or not to the best knowledge of City (a) there is a continuing Default or Event of Default and, if so, specifying each such Default or Event of Default, or (b) there shall have occurred any event which, with the giving of notice or passage of any cure period permitted by this Lease or both (absent curative action prior to the expiration of any applicable cure period), would become an Event of Default of which the signer may have knowledge. Such statement may be relied upon by any then existing or prospective Leasehold Mortgagee, Subtenant, assignee or purchaser of all or a portion of Theater's interest in this Lease.

ARTICLE 31

CONSENTS AND APPROVALS

All consents and approvals that may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act, and each party hereby expressly covenants and warrants that as to all matters requiring the other party's consent or approval under the terms of this Lease, the party requiring the consent or approval shall secure such consent or approval for each and every happening of the event

requiring such consent or approval and shall not claim any waiver on the part of the other party of the requirement to secure such consent or approval. Unless otherwise expressly set forth herein to the contrary, any matter or thing which is required under this Lease to be done "satisfactorily" or to the "satisfaction" of a party need only be done "reasonably satisfactorily" or to the "reasonable satisfaction" of that party.

ARTICLE 32

SURRENDER AT END OF TERM

32.1 Theater shall, on the Expiration Date, quit and surrender to City the Premises, together with all Equipment, vacant and free of all furniture and other personal property in good order and condition, reasonable wear and tear, and free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by City or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and to which City shall have consented and agreed, pursuant to this Lease or in writing, without any payment or allowance whatsoever by City. Theater hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such Expiration Date. Theater's obligation to observe and perform this covenant shall survive the Expiration Date.

32.2 Except as otherwise provided in Article 24 of this Lease, upon the Expiration Date, all Rental and other items payable by Theater under this Lease shall be apportioned to the date of termination.

32.3 Theater acknowledges that possession of the Premises must be surrendered to City at the Expiration Date. If Theater holds over in possession after the Expiration Date, such holding over shall not be deemed to extend the Term or renew this Lease. This provision shall survive the Expiration Date.

32.4 On the Expiration Date of the Lease, fee simple title to the Facility and all Equipment, to the extent not theretofore vested in City pursuant to the terms of this Lease, shall be deemed conveyed to City without the necessity of any further action by either party hereunder, provided, however, that upon City's request, Theater shall execute and deliver to City (in recordable form) all documents necessary to evidence such conveyance, including, without limitation, a quitclaim deed and bill of sale. Theater shall deliver to City Theater's executed counterparts of all Subleases, any service and maintenance contracts that are in Theater's possession and are then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent certificates of occupancy then in effect for the Facility, and all assignable warranties and guarantees then in effect which Theater has received in connection with any work or services performed or Equipment installed in the Facility, together with a duly executed assignment of any of the foregoing to City, all financial reports, documents, books and records whatsoever relating to the Premises.

32.5 On the Expiration Date, Theater, at its sole cost and expense, shall remove from the Premises on or prior to such expiration or reentry all personal property situated thereon which is not owned or in the possession of City, and shall repair any damage caused by such removal. Any property not so removed shall, at the option of City, either become the property of City, or the City may cause any such property not so removed to be removed from the Premises and disposed of, and the cost of any such removal and disposition and of repairing any damage caused by such removal shall be borne by Theater.

ARTICLE 33

ENTIRE AGREEMENT

All understandings and agreements, oral or written, heretofore made between the parties hereto are merged in this Lease, which alone fully and completely expresses the agreement between City and Theater.

ARTICLE 34

QUIET ENJOYMENT

34.1 By Theater. If and as long as Theater shall faithfully perform the agreements, terms, covenants and conditions hereof, Theater shall and may (subject, however, to the provisions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy Theater's Premises for the Term hereby granted without molestation or disturbance by or from City or any Person claiming through or under City and free of any encumbrance created or suffered by City, except from encumbrances created or suffered by Theater and the Permitted Exceptions. This covenant shall be construed as running with the Facility Site to and against subsequent owners and successors in interest.

34.2 By City. At all times during the Term, and until conveyance of the Facility as provided in Section 32.4, City shall and may peaceably and quietly have, hold and enjoy the various portions of the Facility which it is entitled to occupy hereunder for the Term hereby granted without molestation or disturbance by or from Theater or any Person claiming through or under Theater and free of any encumbrance created or suffered by Theater, except from encumbrances created or suffered by City and the Permitted Exceptions. This covenant shall be construed as running with the Facility Site to and against subsequent owners and successors in interest.

ARTICLE 35

COUNTERPARTS & AMENDMENT

35.1 Counterparts. This Lease is comprised of several identical counterparts, having been fully executed by the parties and each to be deemed an original having identical legal effect.

35.2 Amendments. No changes, amendments, modifications, cancellation, or discharge of this Lease, or any part thereof, shall be valid unless in writing and signed by the parties hereto, or their respective successors and assigns.

ARTICLE 36

SEVERABILITY

The invalidity of any provision of this Lease shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Lease.

ARTICLE 37

RECORDING OF MEMORANDUM

City and Theater, each upon the request of the other or any Leasehold Mortgagee, shall execute, acknowledge and deliver a memorandum of this Lease and of each modification of this Lease, in proper form for recordation.

ARTICLE 38

[INTENTIONALLY OMITTED.]

ARTICLE 39

TITLE MATTERS

39.1 Title Documents. Theater has delivered to City from Near North National Title Insurance Company ("Title Company") a current Title Insurance Commitment ("ALTA Form "B" 1992 Form) (the "Title Report") in an amount to be determined, and with an effective date of March 28, 2001, committing to insure Theater's leasehold interest in the Premises. All other documents delivered by City to Theater shall be deemed to be disclosed on the Title Report.

39.2 Survey. City has delivered to Theater a current ALTA survey prepared by National Survey Service, Inc. dated April 25, 2001, and last revised on September 7, 2001, and referred to as Survey No. N-123826 (the "Survey") of the Facility Site, certified to Theater and the Title Company, reasonably acceptable to Theater and the Title Company.

39.3 Permitted Exceptions. Theater accepts the Survey and condition of title as set forth in the Survey and Title Commitment. Those matters affecting title disclosed by the Title Report and the Survey and accepted by Theater shall be known as "Permitted Exceptions".

39.4 Title Policies. At Theater's expense, on the Commencement Date, Theater may cause the Title Company to issue in Theater's favor an extended form ALTA 1992 Form B leasehold policy of title insurance, together with any endorsements that Theater reasonably considers necessary in form and substance satisfactory to Theater (the "Title Policy"), in an amount determined to be appropriate, insuring Theater's good and marketable leasehold to the Facility Site subject only to the Permitted Exceptions. At City's expense, the City may cause the Title Company to issue a leasehold policy issuing the City's leasehold interest in and to the Facility.

ARTICLE 40

AUTHORITY

40.1 Consents and Approvals. Except as otherwise required by law or otherwise expressly stated herein, any consents and approvals to be given by City shall be made by the City's Commissioner of Transportation. Except as otherwise required by law or otherwise expressly stated herein, any consents and approvals to be given by Theater shall be made by the Chairman of the Board of Directors.

40.2 Theater. Execution of this Lease by Theater is authorized and the signature(s) of each person signing on behalf of Theater have been made with complete and full authority to commit Theater to all terms and conditions of this Lease, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. The undersigned hereby represents and warrants that the execution of this Lease was duly authorized by resolution of the Board of Directors of Theater on January 10, 2002.

40.3 City. Execution of this Lease by the Commissioner of Transportation on behalf of the City is authorized by ordinance passed by City Council on February 16, 2000 (C.J. pp. 25682-25690).

ARTICLE 41

MISCELLANEOUS

41.1 Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

41.2 Table of Contents. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

41.3 Successors. The use herein of the words "successors and assigns" of City or Theater shall be deemed to include the heirs, legal representative and permitted assigns of City or Theater.

41.4 Notices. If more than one entity is named as or becomes City or Theater as permitted hereunder, the other party may require the signatures of all such entities in connection with any notice to be given or action to be taken by that party hereunder. Any notice by a party to any entity named as the other party shall be sufficient and shall have the same force and effect as through given to all entities named as such other party.

41.5 No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

41.6 Brokers. Each of the parties represents and warrants to the other that it has not dealt with any broker, finder or like entity in connection with this Lease transaction, and each party shall defend, indemnify and hold the other party harmless from and against any and all claims for brokerage fees or other commissions which may at any time be asserted against the indemnified party founded upon a claim that the aforesaid representation and warranty of the indemnifying party is untrue, together with any and all losses, damages, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) relating to such claims or arising therefrom or incurred by the indemnified party in connection with the enforcement of this indemnification provision.

41.7 Modifications. This Lease may not be changed, modified or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification or termination is sought. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, City and Theater and their respective successors and (except as otherwise provided herein) assigns.

41.8 Certain References. All references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

41.9 Licensed Professionals. All references in this Lease to "licensed professional engineer" or "registered architect" shall mean a professional engineer or architect who is licensed or registered, as the case may be, by the State of Illinois.

41.10 Obligations to Pay. Unless specifically provided otherwise herein, any undertaking either required or permitted hereunder by either City or Theater shall include the obligation to pay for such undertaking.

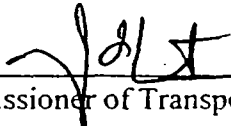
41.11 No Partnership. This Lease shall not be construed to create a partnership or joint venture between the parties.

41.12 Concessions. Theater intends to apply for a license to sell liquor in the Premises for purposes ancillary to Theater's permitted use, including but not limited to concessions prior to performances and during intermissions, for fund-raising events and for other public and private functions. City hereby authorizes the use of the Facility Site for such use, subject to applicable laws, including the ordinances of City.

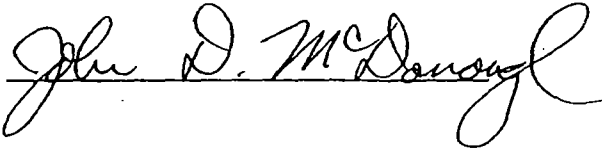
41.13 Limitation on Liability. The obligations of Theater and City under this Lease do not constitute personal obligations of the individual partners, members, directors, officers, agents or shareholders of Theater or City, disclosed or undisclosed. City shall look solely to Theater and its assets, including Theater's estate in the Facility, for satisfaction of any liability under or in respect of this Lease or for the satisfaction of City's remedies for the collection of a judgment (or other legal process) requiring the payment of money by Theater with respect to Theater's obligations under this Lease and no other property and assets of Theater or any partner, member, officer, director, agent or shareholder, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of City's remedies under or in respect of the relationship of City and Theater under this Lease or Theater's use of the Facility.

IN WITNESS WHEREOF the parties have executed this Lease as of the date written above.

CITY OF CHICAGO

By: 
Commissioner of Transportation

Attest:



CHICAGO MUSIC AND DANCE THEATER,
an Illinois not-for-profit corporation d/b/a
Music and Dance Theater Chicago

By: 
Title: Chairman of the Board of Trustees

Attest:



614804.19

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Sandra P. Guthman, personally known to me to be the Chairman of the Board of Trustees of the CHICAGO MUSIC AND DANCE THEATER, an Illinois not-for-profit corporation d/b/a Music and Dance Theater Chicago, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Chairman she signed and delivered the said instrument, as the free and voluntary act of such corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1st day of February, 2002.



Hilda T. Hoagland
Notary Public

My commission expires 6/19/02.

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Miguel d'Escoto personally known to me to be the Commissioner of Transportation of City of Chicago, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Commissioner he signed and delivered the said instrument, as Commissioner aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1st day of February, 2002.

Thelma L. Moon
Notary Public

My commission expires

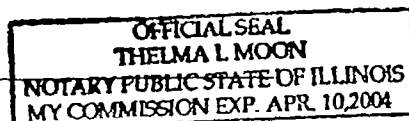


EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH ½ FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 191.41 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET; THENCE SOUTH 89 DEGREES 56 MINUTES 53 SECONDS WEST, 179.41 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 217.86 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, ALONG SAID SOUTH LINE OF EAST RANDOLPH STREET, 182.82 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH ½ FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET, 191.41 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 56 MINUTES 53 SECONDS WEST, 179.41 FEET; THENCE SOUTH 01 DEGREES 14 MINUTES 04 SECONDS EAST, 43.32 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 23 SECONDS EAST, 177.73 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 29.97 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 0.81 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST 13.22 FEET TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PART OF SAID PARCEL LYING ABOVE A HORIZONTAL PLANE OF (+) 22.50 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT AREAS

EASEMENT A:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH 1/2 FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 191.41 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 10.00 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 212.90 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, 1.00 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 2.27 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG SAID SOUTH LINE OF EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EASEMENT B:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH ½ FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 191.41 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 2.27 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 1.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 213.03 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 10.00 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 13.35 FEET; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, 0.81 FEET; THENCE SOUTH 00 DEGREES 04 MINUTES 46 SECONDS EAST, 44.83 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 23 SECONDS WEST, 197.43 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 47.91 FEET; THENCE SOUTH 89 DEGREES 56 MINUTES 53 SECONDS WEST, 10.00; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 20.00 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 20.00 FEET; THENCE SOUTH 01 DEGREES 14 MINUTES 04 SECONDS EAST, 52.90 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 23 SECONDS EAST, 177.73 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 29.97 FEET; THENCE SOUTH 89 DEGREES 16 MINUTES 07 SECONDS EAST, 0.81 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 46 SECONDS WEST, 13.22 FEET TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PART OF SAID PARCEL LYING ABOVE A HORIZONTAL PLANE OF (+) 28.50 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

EASEMENT C:

A TRACT OF LAND IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10 AND IN THE NORTH ½ FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST RANDOLPH STREET AS DEFINED IN THE AMENDATORY LAKE FRONT ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON SEPTEMBER 17, 1969 AND THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL GULF RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED MARCH 5, 1920 AS DOCUMENT NUMBER 6753370; THENCE SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET AS SHOWN ON PLAT OF DEDICATION RECORDED DECEMBER 11, 1979, AS DOCUMENT NUMBER 25276446, A DISTANCE OF 386.24 FEET; THENCE CONTINUING SOUTH 88 DEGREES 54 MINUTES 54 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, 10.00 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF NORTH COLUMBUS DRIVE AS SHOWN ON PLAT OF DEDICATION RECORDED JUNE 5, 1972, BY DOCUMENT NUMBER 21925615, SAID POINT OF INTERSECTION BEING ALSO THE SOUTHEAST CORNER OF PLAT OF DEDICATION OF EAST RANDOLPH STREET RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731, A DISTANCE OF 104.006 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED JULY 9, 1979, AS DOCUMENT NUMBER 25040737; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID EAST RANDOLPH STREET, A DISTANCE OF 384.24 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREES 14 MINUTES 04 SECONDS EAST, 208.41 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 53 SECONDS EAST, 10.00 FEET; THENCE NORTH 01 DEGREES 14 MINUTES 04 SECONDS WEST, 208.27 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF EAST RANDOLPH STREET PER PLAT OF DEDICATION RECORDED MARCH 14, 1979, AS DOCUMENT NUMBER 24879731; THENCE NORTH 89 DEGREES 16 MINUTES 07 SECONDS WEST, ALONG SAID SOUTH LINE OF EAST RANDOLPH STREET, 10.01 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Exhibit C

Depiction of City's Exclusive Elements, Theater's Exclusive Elements, Seasonal Elements and Common Elements

The City's Exclusive Elements of the Facility, referencing Hammond Beeby Rupert Ainge contract documents issued June 29, 2001, are these: (Areas were calculated to finish face of walls.)

<u>Room No.</u>	<u>Description</u>	<u>Area</u>
736	Grant Park Music Festival Secure Storage	733 sf
853, 842, 841, 842, 843, 844, 845, 846, 852, 850, 851, 847, 811, 848, 849, 840	Grant Park Music Festival Office Space	2,602 sf

The Theater's Exclusive Elements of the Facility, referencing Hammond Beeby Rupert Ainge contract documents issued June 29, 2001, are these: (Areas were calculated to finish face of walls.)

<u>Room No.</u>	<u>Description</u>	<u>Area (sf)</u>
106	Chair Storage	131
108	Piano Storage	131
320	Warm-Up Room	1003
329	Light Storage	168
330	Sound Storage	162
513	Technical Director	164
605, 604, 607, 606, 640, 641 807, 804, 808, 809, 806, 833 367, 602, 734, 857	Donor Room & Support Areas MADTC Offices Closets	1534 2,003 196

The Seasonal Elements of the Facility, referencing Hammond Beeby Rupert Ainge contract documents issued June 29, 2001, are these: (Areas were calculated to finish face of walls.)

<u>Room No.</u>	<u>Description</u>	<u>Area (sf)</u>
103, 107, 102, 109, 206	Orchestra Pit & Trap Room	2,029
309, 359, 357, 307, 355, 315, 313, 353, 348, 310, 356, 316, 311, 347, 354, 314, 346, 312	Dressing Rooms, Stage Level	2,500

366, 365	Cross Aisle Lobby, Stage Level	302
319, 364	Pantry & Storage	222
331,332,361,361	Stage, Wing Space, & Staging	8,510
338, 559	Main & Parterre Level Seating	10,358
500, 510 and 542 (partial, see Common elements),		
528,	Parterre Lobby	5.643
548, 508, 549, 554, 517		
550, 509, 551, 560	Toilet Rooms & Support Spaces	2,155
504, 544, 505, 506, 507		
536, 534, 530, 531, 526		
522, 523, 553, 503,	Lobby Support Spaces	2,334
514, 512,		
525, 529, 533	Production/Crew Spaces	1,229
616	Dimmer Room	174
633	Lower Balcony Lobby	2,934
638, 639, 637, 652, 635		
655, 632, 657, 656, 630,		
651, 626, 627,	Lobby Support Spaces	1,482
608, 602,		
609, 612, 610, 611, 613,		
614, 646, 634	Chorus Dressing Rooms	3,786
617	Wardrobe	677
707, 708, 734, 728,		
705, 703, 737, 724,		
730, 706, 709, 712,		
710, 711, 713, 716,	Orchestra Dressing Rooms	4,625
829	Balcony Seating	3,744
828	Upper Balcony Lobby	2,920
826, 827, 861, 815, 816	Lobby Support Spaces	558
860, 817, 858, 862, 863,		
825, 859, 819	Toilet Rooms	1,122
856, 857,	Office Support Spaces	93
902, 904, 908	Upper Randolph Lobby	2,903
916, 907, 905, 917	Lobby Support Spaces	744
900, 903, 906, 910	Follow Spot Rooms	849

The common elements of the Facility, referencing Hammond Beeby Rupert Ainge contract documents issued June 29, 2001, are these: (Areas were calculated to finish face of walls.)

<u>Room No.</u>	<u>Description</u>	<u>Area (sf)</u>
S100, 101, 104	Stairs No. 7& 8	1,081
110	Janitor's Closet	91

S200, 201, 202 S205, 203, 204 S341, S342, S537, S538, S623, S624, S727, S731, S831, S832, S913, S914, S1001, 1002, 1003, 1004	Stairs No. 5 & 6	4,517
318, 327, 332 (btwn E - K and (GP) 9 - 1) 334, 333, 358, S521, 558, 518, 519, 520 658, Freight Elevator # 1., S725, 726, 731, 732	West Wing Areas	16,981
337, 335, 362, 345, 805	Mechanical Rooms	8,342
303, S301, 350, 305, 367, 308, 317, 363, 323, S325, 324, 352, 326, 351, 321, 322, Elev 3, 4, 5	Misc. Building Elements	3,032
S501, 502, 503, 510 (btwn C - D and 3 - 4.5), 511, 542 (btwn A - B, and 10 - 11), 545, 552, 515 S516, 540, Elev 1, 2, 3, 4, 5	Misc. Building Elements	2,301
S601, 603, 618, S619, 622, 631, 642, 643, 645, 646, Elev 1, 2, 3, 4,	Misc. Building Elements	3,174
S701, 702, 704, 714, S715, 718, 720, 722, 735 Elev 3 & 4	Misc. Building Elements	2,634
S801, 803, 810, 812, S813, 814, 824, 834, 835, 854, 855 Elev 1, 2, 3, 4,	Misc. Building Elements	2,924
901, Elev 1 & 2	Misc. Building Elements	146

These elements are depicted on Attachment (1) to this Exhibit.

**Music and Dance Theater Chicago
Construction Schedule**

ID	Task Name	Duration	Start	Finish	2002												2003											
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	Project Start and Mobilization	15 days	Mon 01/28/02	Fri 02/15/02																								
2	Foundations and Structure	315 days	Mon 02/18/02	Fri 05/02/03																								
3	Complete Building Enclosure	250 days	Mon 06/10/02	Fri 05/23/03																								
4	Complete Roof Structure and Test	136 days	Fri 11/29/02	Fri 06/06/03																								
5	Roof Structure Complete	1 day	Fri 06/06/03	Fri 06/06/03																								
6	Finishes	210 days	Mon 09/23/02	Fri 07/11/03																								
7	Utilities & HVAC	400 days	Mon 02/25/02	Fri 09/05/03																								
8	Substantial Completion	1 day	Mon 09/08/03	Mon 09/08/03																								
9	Testing and Commissioning	90 days	Tue 07/01/03	Mon 11/03/03																								
10	Final Completion	1 day	Mon 11/03/03	Mon 11/03/03																								

Project Exhibit E - Schedule
Date: Wed 01/09/02





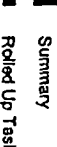
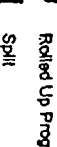
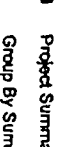




Task		Summary		Rollup Progress		Project Summary	
Progress		Rollup Task		Spill		Group By Summary	
Milestone		Rollup Milestone		External Tasks			

Exhibit F

Final Site Plans, Specifications, and Work Plan including Connectional Elements

The City has prepared the following Final Site Plans, Specifications, and Work Plan, submitted same to Theater for review and approval, and by mutual endorsement below, obtained approval from Theater as noted.

Final Site Plans

Permit set of drawings and project manuals for Package "B" prepared by McDonough Associates, Inc. – dates on drawings vary. The drawing list is appended hereto.

Permit set of drawings for Package "E" prepared by McDonough Associates, Inc. – dates on drawings vary. The drawing list is appended hereto.

"Issue for Bids" set of drawings with project manuals for Package "F-1" prepared by Skidmore, Owings & Merrill dated June 1, 2000. The drawing list is appended hereto.

Proposed details initially produced for inclusion in Package "F1" and now to be included in Package "F2" prepared by Skidmore, Owings & Merrill depicting construction of the expansion joint between the Upper Randolph Street sidewalk and the Music and Dance Theater Chicago facility.

Bid coordination set of drawings for Package "G" prepared by McDonough Associates, Inc. including Frank O. Gehry Associates drawings dated March 30, 2000. The drawings list is appended hereto.

Shop drawings of the grade beams and caisson caps around the perimeter of the Music and Dance Theater Chicago site prepared by City's contractor.

Shop drawings of the garage slab on grade prepared by City's contractor.

As-built drawings for the sheet piling system, including plans elevations, and tie-back information prepared by City's contractor.

Specifications for the sheet piling prepared by McDonough Associates, Inc.

Specifications

As noted above.

Work Plan

The City has issued plans and specifications as identified above and entered into contracts for the performance of certain elements of work to be performed within the Music and Dance Theater Chicago site.

This work includes the following items:

- a) Remediation of all known hazardous materials from within the site pursuant to findings contained in Phase I and Phase II Environmental Site Assessments conducted by Carnow, Conibear & Associates, and in accordance with applicable Federal, State, and Local codes, laws, ordinances and regulations and certification that the in situ material condition of the site has not been altered.
- b) Design, engineering and installation of a temporary sheet piling retention system, including all tie-backs on the East, South and West walls of the site.
- c) Construction of all caissons.
- d) Construction of specific caisson caps identified on the above referenced drawings.
- e) Construction of specific grade beams identified on the above referenced drawings.
- f) Construction of specific columns identified on the above referenced drawings.
- g) Construction of specific elevated slab elements identified on the above referenced drawings.
- h) Excavation of site materials to achieve mean grade elevation of approximately +1.1' CCD
- i) Subject to schedule coordination, installation of the expansion as depicted on City's final plans and described in City's specifications.
- j) Removal from the site of any and all construction equipment, materials, debris, or other items introduced during the construction of City's work.

Connectional Elements

City, as part of its own work, has coordinated the construction of certain connectional elements at the interface of common use points between its facilities and those of Music and Dance Theater Chicago. These are described below:

- a) The door opening connecting the MADTC Lower Ticket Lobby at Lower Randolph Street with the Elevator Vestibule for the Millennium Park Garage.
- b) The exit stair-landings for MADTC Stairs #5 and #6, which exit onto the roof/terrace area above the Theater.
- c) The "Raft Slab" at Elevation +27'-0", the floor slab at elevation +39'-0", and the roof slab over those areas, all related to construction of and access to and from the Freight Elevator.

The "Raft Slab" and Shear Wall above the "Raft Slab" are depicted on Hammond Beeby Rupert Ainge drawings VE-A-3-1, VE-A-4-7, and VE-A-4-8, dated June 29, 2001 and attached hereto.

732634.1

EXHIBIT H

CONTRACT INSURANCE REQUIREMENTS CHICAGO MUSIC AND DANCE THEATER, INC. GROUND LEASE AT THE MILLENNIUM PROJECT

I. REQUIREMENTS OF THEATER DURING CONSTRUCTION

The Theater shall provide or cause to be provided at Theaters own expense, until final completion of construction, the insurance coverages and requirements specified below, insuring all operations related to the construction.

A. Insurance to Be Provided

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law, covering all employees who are to provide a service under this Lease and Employers Liability coverage with limits of not less than \$500,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence 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 project completion), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago, the Chicago Public Building Commission and the Chicago Park District are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for the Theater may maintain limits of not less than \$1,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Theater shall provide Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The City of Chicago and the Chicago Park District are to be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing work for Theater may maintain limits of not less than \$1,000,000 with the same terms herein.

4) Builders Risk

When the Theater undertakes any construction, including improvements, betterments, and/or repairs, the Theater shall provide or caused 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. ~~The City of Chicago shall be named Loss Payee.~~

5) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Lease, 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 Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Lease, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

II. REQUIREMENTS OF CITY DURING CONSTRUCTION

The City shall require Contractor to provide and maintain, at Contractors own expense, until final completion of the construction, the insurance coverages and requirements specified below, insuring all operations related to the Construction.

A. Insurance to Be Provided

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law, covering all employees who are to provide a service under this Lease and Employers Liability coverage with limits of not less than \$500,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence 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 project completion), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago, the Chicago Public Building Commission and the Chicago Park District are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for Contractor may maintain limits of not less than \$1,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor shall provide Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The City of Chicago and the Chicago Park District are to be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing work for Contractor may maintain limits of not less than \$1,000,000 with the same terms herein.

4) Builders Risk

When Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor shall provide 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. The City of Chicago shall be named Loss Payee.

The Contractor shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned, used or rented, by the Contractor.

5) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Lease, 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 Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Lease, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

III. OTHER REQUIREMENTS OF THEATER AND CITY DURING CONSTRUCTION

The Theater and City Contractors will furnish the City of Chicago, Department of Purchases, Contracts and Supplies, City Hall, Room 403, 121 North LaSalle Street 60602 original Certificates of Insurance evidencing the required coverage to be in force on the date of this Lease, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Lease. The Theater and each Contractor shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Lease award. The receipt of any certificate does not constitute agreement by the City that the insurance

requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all Lease requirements. The failure of the City to obtain certificates or other insurance evidence from the Theater or each Contractor shall not be deemed to be a waiver by the City. The Theater and each Contractor shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance shall not relieve any the Theater or each Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Lease, and the City retains the right to stop work until proper evidence of insurance is provided, or the Lease may be terminated.

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-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Theater or Contractors.

The Theater and each Contractor agrees that insurers shall waive their rights of subrogation against the City of Chicago.

The Theater and each Contractor expressly understands and agrees that any coverages and limits furnished by the Theater and Contractors shall in no way limit the Theater and Contractors liabilities and responsibilities specified within the Lease documents or by law.

The Theater and each Contractor expressly understands and agrees that any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Theater and Contractors under the Lease.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Theater and each Contractor shall require all subcontractors to provide the insurance required herein or the Theater or Contractor may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the Theater or Contractors unless otherwise specified herein.

If the Theater or any Contractor or subcontractor desire additional coverages, the Theater, Contractor and subcontractor shall be responsible for the acquisition and cost of such additional protection.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

IV. REQUIREMENTS OF THEATER DURING THE TERM OF THE GROUND LEASE

The Theater shall provide and maintain at Theaters own expense, until Lease expiration, the insurance coverages and requirements specified below, insuring all operations related to the Lease.

A. Insurance to Be Provided

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law, covering all employees who are to provide a service under this Lease and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago and the Chicago Park District are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the Lease.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Theater shall provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

4) All Risk Property

The Theater shall be responsible for insurance covering any loss or damage at full replacement cost of the Facility, including improvements and betterments (including all real property and Theater's owned, personal property and Equipment). ~~The insurance shall cover both the Theater's and City's use, occupancy and maintenance of Facility and Facility Site.~~

B. Other Requirements

The Theater will furnish the City of Chicago, Department of Finance, Risk Management Office, DePaul Center, Room 400, 333 South State Street 60604 original Certificates of Insurance evidencing the required coverage to be in force on the date of this Lease, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Lease. The Theater shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Lease award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all Lease requirements. The failure of the City to obtain certificates or other insurance evidence from Theater shall not be deemed to be a waiver by the City. The Theater shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance shall not relieve Theater of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Lease, and the City retains the right to stop work until proper evidence of insurance is provided, or the Lease may be terminated.

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-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Theater.

The Theater agrees that insurers shall waive their rights of subrogation against the City of Chicago.

The Theater expressly understands and agrees that any coverages and limits furnished by Theater shall in no way limit the Theater's liabilities and responsibilities specified within the Lease documents or by law.

The Theater expressly understands and agrees that any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Theater under the Lease.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

Exhibit I

Freight Elevator and Loading Dock

A freight elevator, designated Elevator Freight Elevator No. 1, and depicted on various Hammond Beeby Rupert Ainge drawings dated June 29, 2001 serves both the Facility and the Bandshell. Common access to and from the Freight Elevator is provided at the -12', +27' and +39' elevations of the Facility. The Facility has exclusive access at elevation +17'.

The access provided at elevation -12' is at the stage level and provides access from the loading dock and through the back stage area located at that level.

Access from the Freight Elevator to the Facility at elevations +27 and +39 is provided through doors 718 and 810.

Hammond Beeby Rupert Ainge drawings VE-A1-3, VE-A1-7, and VE-A1-8 show the floor plans depicting the Freight Elevator and Freight Elevator Access Areas. Drawing VE-A1-3 identifies the Freight Elevator and depicts the Freight Elevator Access Area at elevation -12', the Stage Level. It is attached hereto as Exhibit I-1.

Hammond Beeby Rupert Ainge drawings VE-A1-7 and VE-A1-8 depict the Freight Elevator Access areas at elevations +27 and +39, the Orchestra Level and Upper Balcony Level, respectively. They are attached hereto as Exhibit I-2.

Hammond Beeby Rupert Ainge drawings VE-A3-2, VE-A4-43 and VE-A4-44 further depict construction of the Freight Elevator and Freight Elevator Hoistway, as part of Theater's Work, and the portion of the Freight Elevator Work which is not a part of Theater's Work and which is to be constructed as part of City's Work. These drawings are attached hereto as Exhibit I-3.

Exhibit J

Final Plan, Specifications and Work Plan

The Theater has prepared, through its architect, Hammond Beeby, Rupert & Ainge, the following Final Site Plans and Specifications for the Music and Dance Theater Chicago, submitted same to City for review and approval, and by mutual endorsement below, obtained approval from City as noted.. The Work Plan is contained in Exhibit "E" to the Lease.

Final Site Plans

Drawing Volumes 1A, 1B, 2, 3, 4, and 5 dated June 29, 2001

Specifications

Project Manual specifications Volumes 1A and 1B, 2, 3, 4, and 5 dated June 29, 2001.

Work Plan

The work plan shall be based upon the schedule provided under Exhibit E to this lease. Work shall commence upon obtaining applicable permits and approvals, notwithstanding other provisions of the Lease which may so govern.

DISCLOSURE AFFIDAVIT FOR
CONTRACTS AND CONCESSION
AGREEMENTS NOT INVOLVING FEDERAL FUNDS

Exhibit M

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Every individual or entity submitting a bid or proposal to the City of Chicago for a contract or concession agreement not involving federal funds must complete this Disclosure Affidavit (hereafter "Disclosure Affidavit" or "Affidavit"). If the bidder/proposer is a joint venture, the joint venture and each of the joint venture partners must complete a Disclosure Affidavit.

Please print or type all responses clearly and legibly. If you need additional space for a response, attach extra pages. Please indicate the question to which you are responding on any extra pages you attach.

For purposes of this Disclosure Affidavit, the term "Contract" refers to the contract, concession, modification, amendment, extension, or other action in connection with which you are submitting the Disclosure Affidavit.

Please note that this Disclosure Affidavit requires bidders/proposers to obtain various certifications from their subcontractors before the subcontractors may perform any work under the Contract. The terms of the required subcontractor certifications are set forth below in Parts II and IV.

After reviewing your completed Disclosure Affidavit, the Corporation Counsel or the Purchasing Agent may require additional information to achieve full disclosure relevant to the bid, proposal, or other application.

Project Name: Chicago Music and Dance Theater

Bidder/Proposer Name: Chicago Music and Dance Theater, an
Illinois not-for-profit corporation
d/b/a Music and Dance Theater Chicago

Purchase Order No.: N/A

Bidder/Proposer Business Address: 203 N. LaSalle St., Mezzanine
Chicago, IL 60601

Goods or services to be provided under this Contract: Construction of Music and Dance Theater

City department to which you are submitting this form (check one):

☐ Purchasing

☒ Other: Law

The undersigned, Sandra P. Guthman, as Chair, and on behalf
of Chicago Music and Dance Theater ("Bidder/Proposer" or "Contractor"), having been
(Name) (Title)
(Business Name)
duly sworn under oath certifies as follows:

PART I. DISCLOSURE OF OWNERSHIP INTERESTS

Indicate below whether the bidder/proposer is an individual or a legal entity and, if a legal entity, indicate the type of entity. Then complete Part (A), (B), (C), or (D) below, as applicable. All bidders/proposers must complete Part (E). For bidders/proposers that are sole proprietorships, Part (E) is the only section of Part I that must be completed.

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Business corporation | <input type="checkbox"/> Partnership |
| <input checked="" type="checkbox"/> Not-for-profit corporation | <input type="checkbox"/> Joint venture |
| <input type="checkbox"/> Sole proprietorship | <input type="checkbox"/> Other: _____ |

A. CORPORATIONS (FOR-PROFIT AND NOT-FOR-PROFIT)

1. Incorporated in the State of _____

2. List below the name and title of all officers of the corporation:

Name	Title
See Attachment I for list of officers and Board of Trustees	

3. List below the name and title of all directors of the corporation:

Name	Title
See Attachment I	

TO BE COMPLETED BY FOR-PROFIT CORPORATIONS ONLY:

1. If there are fewer than 100 shareholders, list below the name, business address, and percentage of ownership interest of each shareholder:

Name	Business Address	Ownership Interest
N/A		%
		%
		%

2. If there are 100 or more shareholders, list below the name, business address, and percentage of ownership interest for each shareholder who owns shares equal to or in excess of 7.5% of the proportionate ownership of the corporation

Name	Business Address	Ownership Interest
N/A		%
		%
		%

TO BE COMPLETED BY NOT-FOR-PROFIT CORPORATIONS ONLY:

List below the name, business address, and percentage of control of each member. If there are no members, write "none."

Name	Business Address	Percentage Control
None		%
		%
		%

B PARTNERSHIPS

List below the name and business address of each partner and the percentage of ownership interest of each therein:

Name	Business Address	Ownership Interest
N/A		%
		%
		%

Name	Business Address	Ownership Interest
		%
		%
		%

C. LIMITED LIABILITY COMPANIES

1. List below the names and titles of the officers, if any. If there are no officers, write "none."

Name	Title
N/A	

2. List below the name, business address, and percentage of ownership interest of each (i) member and (ii) manager:

Name	Business Address	Ownership Interest
N/A		%
		%
		%

D. LAND TRUSTS, BUSINESS TRUSTS, ESTATES AND OTHER SIMILAR ENTITIES

1. Trust name and number, or other information identifying the trust: N/A

2. List below the name and business address of all trustees:

Name	Business Address

3. List below the name, business address, and percentage of ownership interest of all beneficiaries:

Name	Business Address	Ownership Interest
N/A		%
		%
		%

E. ADDITIONAL INFORMATION – TO BE COMPLETED BY ALL BIDDERS/PROPOSERS

1. Is any ownership interest in the bidder/proposer held by one or more agents or nominees on behalf of another individual or legal entity?

☐ Yes ☒ No

If so, list below each principal's name, business address, percentage of ownership interest, and the name of the principal's agent or nominee:

Name	Business Address	Ownership Interest	Agent/Nominee
		%	
		%	
		%	

2. Is the bidder/proposer, or any ownership interest in the bidder/proposer, constructively controlled by another individual or legal entity, other than an agent or nominee disclosed above?

☐ Yes ☒ No

If so, list below the name and business address of each individual or entity possessing constructive control, the party whose interest is controlled, and the relationship between the two under which the control is or may be exercised:

Name	Business Address	Name of Party Whose Interest is Controlled	Relationship

3. Is any stock or beneficial interest in the bidder/proposer held by a corporation or other legal entity?

☐ Yes ☒ No

If so, each such corporation or other legal entity must make all disclosures requested in Part I (Disclosure of Ownership Interests) of this Disclosure Affidavit and must certify all information provided.

NOTE: Pursuant to Section 2-154-020 of the Municipal Code of Chicago, the information provided in Part I above must be kept current. In the event of material changes, the bidder/proposer must supplement this Affidavit, up to the time the City takes action on the bid, proposal, or other application for which this Affidavit is being submitted.

PART II. CERTIFICATION REGARDING PROHIBITED CONDUCT.

A. **CONTRACTOR**

1. The Contractor or any subcontractor to be used by the Contractor in the performance of this Contract, or any affiliated entity¹ of the Contractor or any such subcontractor, or any responsible official thereof, or, if acting pursuant to the direction or authorization of a responsible official thereof, any official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, has not, during a period of three years prior to the date of execution of this Affidavit or, if a subcontractor or subcontractor's affiliated entity, during a period of three years prior to the date of award of the subcontract:

a. Bribe or attempted to bribe, or been convicted of bribery or attempting to bribe, a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States, in that officer's or employee's official capacity; or

b. Agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. Made an admission of guilt of any conduct described in 1(a) and (b) above which is a matter of record but has not been prosecuted for such conduct.

2. Neither the Contractor nor any employee, official, agent, or, for partnerships and joint ventures, partner of the Contractor is barred from Contracting with any unit of state or local government as a result of engaging in or being convicted of (a) bid-rigging in violation of 720 ILCS 5/33E-3; (b) bid-rotating in violation of 720 ILCS 5/33E-4; or (c) any similar offense of any state or the United States which contains the same elements as either bid-rigging or bid-rotating.

3. The Contractor and its principals, as defined in 49 CFR Sec. 29.105:

a. Are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;

b. Have not within a three-year period preceding this Affidavit been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local) transaction or Contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property; or had a civil judgment rendered against them for commission of fraud;

c. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (3)(b) above; and

d. Have not within a three-year period preceding the date of this Affidavit had one or more public transactions (federal, state or local) terminated for cause or default.

4. If the Contractor is unable to certify to any of the above statements [Part II(A)(1)-(3)], Contractor shall explain below. Attach additional pages if necessary.

[If no explanation appears or begins on the lines above, it shall be conclusively presumed that the Contractor certifies to each of the above statements.]

B. SUBCONTRACTORS

1. The Contractor has obtained certifications in form and substance equal to Part II(A)(1)-(3) of this Affidavit from all subcontractors that the Contractor presently intends to use to perform this Contract. As to subcontractors to be used to perform this Contract who are not yet known by the Contractor, the Contractor will obtain certifications in form and substance equal to Part II(A)(1)-(3) of this Affidavit prior to using them as subcontractors.
2. The Contractor shall not, without the prior written consent of the City, use any subcontractors to perform this Contract if the Contractor, based on information contained in the subcontractor certification or any other information known or obtained by the Contractor, has reason to believe that, within three years prior to the award of any subcontract, the subcontractor or such subcontractor's affiliated entity, or any official, agent, or employee of such subcontractor or subcontractor's affiliated entity, has engaged in, been convicted of, or made an admission of guilt of any of the conduct listed in Part II(A)(1); or that the subcontractor, an employee, official, agent, or, for partnerships and joint ventures, partner thereof is barred from Contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging, bid-rotating, or any similar offense; or that any of the circumstances set forth in Part II(A)(3) applies to the subcontractor or its principals. Furthermore, the Contractor shall not, without the prior written consent of the City, use as a subcontractor any individual, firm, partnership, corporation, joint venture or other entity from which the Contractor is unable to obtain a certification in form and substance equal to Part II(A)(1)-(3) of this Affidavit or which the Contractor has reason to believe cannot provide a truthful certification.
3. The Contractor shall maintain all subcontractors' certifications required by Paragraph (1) above for the duration of the Contract and shall make such certifications promptly available to the City upon request.

PART III. CERTIFICATION REGARDING TAXES, FEES, AND LITIGATION

A. STATE TAX DELINQUENCIES

Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, Contractor is contesting its liability for the tax or the amount of the tax in accordance with the procedures established by the appropriate Revenue Act. Alternatively, Contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.

B. OTHER TAXES/FEES

Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.

C. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

Contractor is not a party to any pending lawsuits against the City nor has Contractor been sued by the City or its agents in any judicial or administrative proceeding within the ten-year period preceding execution of this Affidavit.

D. EXCEPTIONS

If the Contractor is unable to certify to any of the above statements [Part III (A)-(C)], Contractor shall explain below. In the case of any judicial or administrative proceedings, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each proceeding. Attach additional pages if necessary.

[If no explanation appears or begins on the lines above, it shall be conclusively presumed that the Contractor certifies to each of the above statements.]

A. CONTRACTOR

1. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit, (a) violated or engaged in any conduct which violated Sections 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapters 7-28 or 11-4 of the Municipal Code or any other Environmental Restriction; (b) received notice of any claim, demand or action, including but not limited to citations and warrants, from the City of Chicago, the State of Illinois, the federal government, any state or political subdivision thereof, or any agency, court or body of the federal government or any state or political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions, relating to a violation or alleged violation of Sections 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapters 7-28 or 11-4 of the Municipal Code or any other Environmental Restriction; or (c) been subject to any fine or penalty of any nature for failure to comply with Sections 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapters 7-28 or 11-4 of the Municipal Code or any other Environmental Restriction.

If the Contractor is unable to certify to any of the above statements [Part IV(A)(1)(a)-(c)], Contractor shall identify all exceptions and indicate whether any such exceptions occurred within the City or otherwise pertain to the City. Attach additional pages if necessary.

[If no explanation appears or begins on the lines above, it shall be conclusively presumed that the Contractor certifies to the above statements.]

2. Contractor shall comply with all requirements of the Clean Air Act ("CAA"), 42 U.S.C. §7401-7642, and the Clean Water Act ("CWA"), 33 U.S.C. §1251-1387, including the requirements of section 114 of the CAA and section 308 of the CWA, and all other applicable clean air standards and clean water standards in performing the Contract.

3. Until completion of the Contractor's performance under the Contract, if the Contractor violates Sections 7-28-440 or 11-4-1500, any other provisions of Chapters 7-28 or 11-4 of the Municipal Code, or any other Environmental Restrictions, whether in the performance of the Contract or otherwise, such violation shall be considered an event of default under the Contract.

B. SUBCONTRACTORS

1. The Contractor has obtained certifications in form and substance equal to Part IV(A)(1) and (2) of this Affidavit from all subcontractors that the Contractor presently intends to use to perform this Contract. As to subcontractors to be used to perform this Contract who are not yet known by the Contractor, the Contractor will obtain certifications in form and substance equal to Part IV(A)(1) and (2) of this Affidavit prior to using them as subcontractors.

2. The Contractor shall not, without the prior written consent of the City, use any subcontractors to perform this Contract if the Contractor, based on information contained in the subcontractor certification or any other information known or obtained by Contractor, has reason to believe that the subcontractor has, within the preceding five years, been in violation of any Environmental Restriction, received notice of any claim relating to a violation of an Environmental Restriction, or been subject to any fine or penalty for a violation of an Environmental Restriction. Furthermore, the Contractor shall not, without the prior written consent of the City, use as a subcontractor any individual, firm, partnership, corporation, joint venture or other entity from which the Contractor is unable to obtain a certification in form and substance equal to Part IV(A)(1) and (2) of this Affidavit or which the Contractor has reason to believe cannot provide a truthful certification.

3. The Contractor shall maintain all subcontractors' certifications required by Paragraph (1) above for the duration of the Contract and shall make such certifications promptly available to the City upon request.

PART V. CERTIFICATION REGARDING ETHICS AND INSPECTOR GENERAL

The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code, entitled "Office of Inspector General," and all provisions of Chapter 2-156 of the Municipal Code, entitled "Governmental Ethics."

PART VI. CERTIFICATION REGARDING COURT-ORDERED CHILD SUPPORT COMPLIANCE

For purposes of this Part VI, "Substantial Owner" means any person who owns or holds a 10% or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, the substantial owner is the individual or sole proprietor. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. An indirect or beneficial interest is an interest in the Contractor held either by a corporation, joint venture, trust, partnership, estate or other legal entity in which the individual holds an interest, or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a 20% interest in the Contractor, and an individual has a 50% interest in Corporation B, then such individual indirectly has a 10% interest in the Contractor and the individual is a Substantial Owner of the Contractor. If Corporation B is held by another entity, then this analysis must be applied to that entity.

If Contractor's response below is #1 or #2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations (A) throughout the term of the Contract and any extensions thereof; or (B) until the performance of the Contract is completed, whichever is later. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either (A) or (B) constitutes an event of default.

Check one:

1. ☐ No Substantial Owner has been declared in arrearage on any child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.
2. ☐ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. ☐ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on child support obligations and (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed; or (2) at least one such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed; or both (1) and (2).
4. ☒ There are no Substantial Owners.

PART VII. AFFIDAVIT OF LOCAL BUSINESS

If this is a competitively bid Contract funded in whole by City funds, Contractor should complete this section.

- A. Is bidder/proposer a "Local Business" as defined by the provisions of this Specification?
☐ Yes ☐ No
- B. How many persons are currently employed by bidder/proposer? _____
- C. Does bidder/proposer have business locations outside the City of Chicago?
☐ Yes ☐ No
 If so, list such bidder/proposer's business addresses: _____
- D. How many of bidder/proposer's current employees work at City of Chicago locations? _____
- E. Is bidder/proposer subject to City of Chicago taxes (including the Head Tax)?
☐ Yes ☐ No

PART VIII. INCORPORATION INTO CONTRACT, COMPLIANCE, AND PENALTIES

The bidder/proposer understands and agrees that:

A. The above certifications [Parts I-VII] shall become part of any Contract awarded to the bidder/proposer and are a material inducement to the City's execution of the Contract or other action with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the bidder/proposer. Furthermore, the bidder/proposer shall comply with these certifications during the term and/or performance of the Contract or other action.

B. If the City determines that any information provided herein is false, incomplete, or inaccurate, the City may terminate the Contract or other transaction, terminate the applicant's participation in the Contract or other transaction, and/or decline to allow the applicant to participate in other Contracts or transactions with the City.

C. Contractor will terminate its subcontract with any subcontractor, if the City so demands, if the City determines that any information provided by a subcontractor in any of the subcontractor certifications required by this Affidavit is false, incomplete, or inaccurate. Contractor shall insert adequate provisions in all subcontracts to allow it to terminate subcontracts as required by this paragraph.


D. The following civil and criminal penalties, among others, may apply:

A Contractor who makes a false statement material to Part II(A) (2) of this certification commits a Class 3 Felony. 720 ILCS 5/33E - 11(b). Making a false statement concerning Part III(A) of this certification is a Class A misdemeanor, voids the Contract and allows the City to recover all amounts paid to the Contractor under the Contract in a civil action. 65 ILCS 5/11-42. 1-1.

E. This Disclosure Affidavit, some or all of the all information provided herein, and any attachments may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this Disclosure Affidavit, bidder/proposer waives and releases any possible rights or claims it may have against the City in connection with the public release of any information contained in the completed Disclosure Affidavit and any attachments.

PART IX. VERIFICATION

Under penalty of perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor, that I have personal knowledge of all the certifications made herein, and that the same are true.


Signature of Authorized Officer

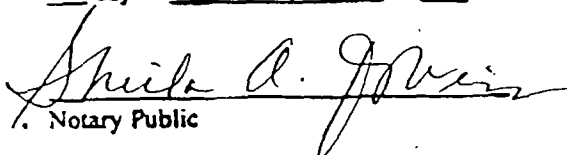
Title Chair, Board of Trustees

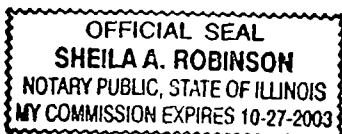
Sandra P. Guthman
Name of Authorized Officer (Print or Type)

312-629-8696
Business Telephone Number

Subscribed and sworn to before me this

25 day of January, 2002


Notary Public

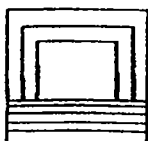


1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership identity of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.

2. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants, including but not limited to (1) the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*); (2) the Hazardous Material Transportation Act (49 U.S.C. § 1801 *et seq.*); (3) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*); (4) the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (5) the Clean Air Act (42 U.S.C. § 7401 *et seq.*); (6) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); (7) the Safe Drinking Water Act (42 U.S.C. § 300f); (8) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 *et seq.*); (9) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

2/98

ATTACHMENT I



MUSIC AND DANCE
THEATER CHICAGO

Music and Dance Theater Chicago
Board of Trustees

Sandra P. Guthman (1)
Joan W. Harris (2)
James J. Glasser (3)
Barry Hastings (4)
Cameron S. Avery (5)
Sarah Solotaroff (6)

Polk Bros. Foundation, President
The Harris Foundation, President
GATX Corporation, Chairman Emeritus
The Northern Trust Co., President and Chief Operating Officer
Bell Boyd & Lloyd, LLC, Member
Chicago Community Trust, Vice President of Programs

James L. Alexander
Peter Ascoli
John W. Ballantine
Robert Belcaster
Bonnie Brooks (Ex-officio)
James B. Fadim
Marshall Field
Caryn Harris
Margaret D. Hartigan
Thomas C. Heagy
John I. Jellinek
Donna LaPietra
Diane Mayer
Joyce A. Moffatt (Ex-officio)
Abby O'Neil
Marian P. Pawlick
Don Michael Randel
Shirley W. Ryan
Harrison I. Steans
Donald M. Stewart
Mary Kay Sullivan
M. James Termondt
Robin S. Tryloff
Thomas R. Walker
Dori Wilson

Alexander & Alexander, Partner
Lohengrin Foundation
Civic Volunteer
Real Estate and Development Consultant
Dance Center of Columbia College Chicago, Chair
Seyfarth Shaw
Old Mountain Company
Civic Volunteer
Civic Volunteer
LaSalle National Bank, Vice Chairman
Jelco Ventures, Inc.
Kurtis Productions
Civic Volunteer
General Manager, Music and Dance Theater Chicago
Civic Volunteer
Shedd Aquarium Board, Chairman
University of Chicago, President
Pathways Center for Children
Financial Investments Corporation, Chairman
Chicago Community Trust, President
Bank of America, Senior Vice President
Civic Volunteer
Sara Lee Foundation, Senior Manager of Community Relations
City of Chicago, Department of Aviation Commissioner
Dori Wilson & Associates, President

(1) Chair
(2) President
(3) Vice President
(4) Treasurer
(5) Secretary
(6) Assistant Secretary

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~~amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); the Rehabilitation Act of 1973, 29 U.S.C. Sec. 793-794 (1981); the Americans with Disabilities Act, P.L. 101-336; 41 C.F.R. part 60 *et seq.* (1990); Air Carriers Access Act, 49 U.S.C.A. 1374; and, FAA Circular No. 150/5100 15A.~~

2. State Requirement: The Contractor must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and the rules and regulations of the Illinois Department of Human Rights; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; and the Environmental Barriers Act, 410 ILCS 251 (*et seq.*)
3. City Requirements. The Contractor must comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago (1990), as amended. Further, the Contractor must furnish such reports and information as requested by the Chicago Commission of Human Relations.
4. Subcontractors: The Contractor agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any such materials, labor or services ~~in connection with this Contract.~~

D. Conflict of Interest

No member of the governing body of the City or other units of government and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Project to which this Contract pertains, will have any personal interest, direct, or indirect, in this Contract. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee will be permitted to any share or part of this Contract or to any financial benefit to arise from it.

The Contractor covenants that its officers, directors and employees, and the officers, directors and employees of each of its members if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of the Work hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest must be employed. The Contractor agrees that if the City, by the Commissioner in his or her reasonable judgment, determines that any of Contractor's work for others conflicts with the Work, the Contractor must terminate such other services immediately upon request of the City.

Furthermore, if any federal funds are to be used to compensate or reimburse the Contractor under this Contract, the Contractor represents that it is and will remain in compliance with

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federal restrictions. It represents further that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C.S. 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, the Contractor shall execute a Certification Regarding Lobbying, which is contained in the Disclosure Affidavit, and is attached hereto as an exhibit and incorporated by reference as if fully set forth herein.

E. Relationships with Elected Officials

1. Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City council committee hearing or in any City council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this contract shall be grounds for termination of this contract.
2. Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided however, a financial interest shall not include:
 - a. any ownership through purchase at fair market value or inheritance of less than 1% of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended;
 - b. the authorized compensation paid to an official or employee for his office or employment;
 - c. any economic benefit provided equally to all residents of the City;
 - d. a time or demand deposit in a financial institution; or
 - e. an endowment or insurance policy or annuity contract purchased from an insurance company.
3. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

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F. Chapter 2-56 of the Municipal Code of Chicago Office of Inspector General

It shall be the duty of any bidder, proposer, Contractor, all Subcontractors and every applicant for certification of eligibility for a City Contractor program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor or such applicant to cooperate with the Inspector General in any investigation undertaken pursuant to Chapter 2-56 of the Municipal Code of Chicago. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago. All Contractors shall inform Subcontractors of this provision and require understanding and compliance herewith.

G. Governmental Ethics Ordinance

The Contractor must comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to Section 2-156-120 of this chapter pursuant to which no payment, gratuity or offer of employment is made in connection with any City contract, by or on behalf of a subcontractor to the prime contractor or higher tier subcontractor or any person associated there with, as an inducement for the award of a subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this chapter is voidable as to the City.

H. Disclosure Affidavit and Disclosure of Retained Persons

The Contractor is required to submit a fully executed Disclosure Affidavit and a Disclosure of Retained Parties, on the form in the Proposal and Acceptance provisions of Book Two of these specifications. These documents must be signed by an authorized officer of the company before a notary and such documents are incorporated by reference to this Contract.

I. Section 2-92-380 of The Municipal Code of Chicago

In accordance with Section 2-92-380 of the Municipal Code of Chicago, and in addition to any other rights and remedies (including any set-off) available to the City of Chicago under the Contract or permitted at law or in equity, the City is entitled to set off a portion of the Contract price or compensation due under the Contract, in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/ or the amount of any debt owed by the contracting party to the City.

For purposes of this provision, "outstanding parking violation complaints" means a parking ticket, notice of parking violation, or parking violation complaint on which neither payment has been made nor an appearance filed in the Circuit Court of Cook County within the time specified on the complaint. "Debt" means a specified sum of money owed to the City for which the period granted for payment has expired.

Notwithstanding the provisions of this section above, no such debt(s) or outstanding parking violation complaint(s) are off set from the Contract price or compensation due under the Contract if one or more of the following conditions are met:

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1. The contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department for the payment of all outstanding parking violation complaints and/or debts owed to the City and the contracting party is in compliance with the agreement; or
2. The contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
3. The contracting party has filed a petition in bankruptcy and the debts owed in the City are dischargeable in bankruptcy.

J. Americans with Disabilities Act

All construction or alteration undertaken by Contractor in connection with this Contract shall be performed in compliance with all Federal, State and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to the following: American with Disabilities Act, P.L. 101-336 (1990) and the Uniform Federal Accessibility Standards ("UFAS") or the American with Disabilities Act ("ADA") and; the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.* (1991), and the regulations promulgated thereto at 71 Ill. Adm. Code Ch. 1, Sec. 400.110. In the event that the above cited standards are inconsistent, the Contractor shall comply with the standard providing greater accessibility.

K. Veterans Preference

The Contractor must comply with the provisions of 330 ILCS 55/0.01 *et seq.*, which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative and supervisory positions) preference is given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates. The Contractor must ensure that the following provision is inserted in all contracts entered into with any Subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Contract.

L. Steel Products

To the extent permitted by law, this Contract shall be subject to all provisions of the "Steel Products Procurement Act," 30 ILCS 565/1 *et seq.* as it may be amended from time to time. Steel Products issued or supplied in the performance of this Contract or any subcontract thereto shall be manufactured or produced in the United States. For purposes of this Section "United States" means the United States and any place subject to the jurisdiction thereof and "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated,

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or otherwise similarly processed or processed by a combination of two or more such operations, from Steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making processes. Knowing violation of this Section may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

M. Chicago Residency Requirements

Except as otherwise prohibited by law, the Contractor and all Subcontractors that perform work on the site of the construction project undertaken pursuant to this Contract must comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50% of the total worker hours shall be performed by actual residents of the City of Chicago). Provided, however that in addition to complying with this percentage, the Contractor and all Subcontractors must make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

1. "Actual residents of the City of Chicago" shall mean persons domiciled with the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment
2. A Contractor or bidder may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-920-330 in accordance with standards and procedures developed by Chief Procurement Officer.
 - a. The Contractor must provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the project. The Contractor and Subcontractor must maintain copies of personal documents supportive of every Chicago employee's actual record of residence.
 - b. Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the Commissioner of the supervising Department in triplicate, must clearly identify the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.
 - c. Full access to the Contractor's and Subcontractor's employment records shall be granted to the Chief Procurement Officer, the Commissioner of the supervising department, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Contractor and Subcontractors must maintain all relevant personnel data and records for a period of at least three years after final acceptance of the work.

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- d. At the direction of the supervising department, affidavits and other supporting documentation will be required of the Contractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.
3. Good faith efforts on the part of the Contractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.
4. When the work is completed, in the event that the City has determined that the Contractor failed to ensure the fulfillment of the requirement of this section concerning worker hours performed by actual Chicago Residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of noncompliance, it is agreed that 1/20 of 1%, 0.0005, of the approved Contract Value for this Contract shall be surrendered by the Contractor to the City in payment for each percentage of shortfalls toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed. The willful falsification of statements in the certification of payroll data may subject the Contractor or Subcontractors or employee to prosecution. Any retainage to cover Contract performance that may become due to the Contractor pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City, pending the Chief Procurement Officer's determination whether the Contractor must surrender damages as provided in this paragraph.
5. Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements For Affirmative Action To Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246" or other affirmative action required for equal opportunity under the provisions of this Contract. The Contractor shall include this provision in all subcontracts.

N. Employment of Illinois Laborers on Public Works Projects

Contractor shall use only Illinois laborers in the performance of this Contract to the extent (1) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS, 570/0.01, as amended from time to time and (2) otherwise permitted by law.

O. Compliance with Child Support Orders Ordinance

The Child Support Arrearage Ordinance, Municipal Code of Chicago, Section 2-92-415, furthers the City's interest in contracting with entities which demonstrate financial responsibility,

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integrity and lawfulness, and finds that it is especially inequitable for Contractors to obtain the benefits of public funds under City contracts while its owners fail to pay court-ordered child support, and shift the support of their dependents onto the public treasury.

In accordance with Section 2-92-415 of the Municipal Code of Chicago, if the Circuit Court of Cook County or an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owner(s) in arrearage on their child support obligations and: (1) such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (2) such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed, (see Certification of Compliance with Child Support Orders in Disclosure Affidavit), then:

For those bidders in competitive bid contracts, the City shall assess an 8% penalty. This penalty shall increase their bid price for the purpose of canvassing the bids in order to determine the lowest responsible bidder. This penalty shall apply only for purposes of comparing bid amounts and shall not affect the amount of any contract payment.

For purposes of this section, "SUBSTANTIAL OWNER" means any person who owns or holds a 10% or more percentage of interest in the bidder, where the bidder is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship.

"PERCENTAGE OF INTEREST" includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a 20% interest in Contractor, and an individual or entity has a 50% or more percentage of interest in Corporation B, then such individual or entity indirectly has a 10% or more percentage of interest in the Contractor. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

The provisions of this Section shall only apply where not otherwise prohibited by federal, state or local law.

P. Local Business Preference

The Chief Procurement Officer shall accept the lowest bid price or lowest evaluated bid price from a responsive and responsible local business, provided that the bid does not exceed the lowest bid price or lowest evaluated bid price from a responsive and responsible non-local business by more than 2%.

A local business ("Local Business") is a business located within the corporate limits of the City, which has the majority of its regular, full-time work force located within the City, and is subject to City of Chicago taxes.

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Where all partners to a joint venture are Local Businesses, the joint venture shall be deemed to be a Local Business. Where all partners to a joint venture are not Local Businesses, such joint venture shall be considered a Local Business only if Local Businesses hold at least a 50% interest in the venture. Local Businesses have a 50% interest in the joint venture only if the Local Business partners in the venture hold subcontracts equal to 50% or more of the amount of the bid. Joint venture bidders shall submit information and documentation (including, but not limited to, the joint venture agreement and subcontracts) with their bids to establish their eligibility for the Local Business Preference. A joint venture bidder which fails to submit such information shall not be entitled to the Local Business Preference.

The Chief Procurement Officer's determination of a bidder's eligibility for the Local Business Preference shall be final.

Q. MacBride Principles Ordinance

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of Chicago, if the primary Contractor conducts any business operations in Northern Ireland, it is hereby required that the Contractor shall make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

For those Contractors who take exception in competitive bid contracts to the provision set forth above, the City shall assess an 8% penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty will apply only for purposes of comparing bid amounts and will not affect the amount of any contract payment.

R. Chicago Living Wage Ordinance

Section 2-92-610 of the Municipal Code of Chicago requires eligible Contractors and their subcontractors to pay a living wage (currently \$7.60 per hour minimum base wage) to covered employees employed in the performance of this Agreement. Contractor is an eligible Contractor if at any time during the performance of this Agreement Contractor has 25 or more full-time employees. If Contractor is, or becomes eligible, Contractor and its Subcontractors must pay at least the base wage to covered employees. Covered employees are: security guards (but only if Contractor and its Subcontractors employ in the aggregate 25 or more of them), and, in any number, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers. Section 2-92-610 does not apply to not-for-profit corporations with federal 501(c)(3) tax exempt status. Also, if the work being done under this Agreement is subject to payment of prevailing wages, and the prevailing wages are higher than the base wage, then prevailing wage rates apply and must be paid.

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S. Buy America

The Contractor shall ensure that, to the extent applicable, services provided hereunder comply with any Buy America provisions of the Federal government and/or any similar provisions of the State or City.

~~XXIII. MISCELLANEOUS~~

A. Counterparts

This Contract is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

B. Modifications

No changes, modifications, cancellation, or discharge of this Contract, or any part thereof, is valid unless in writing and signed by the parties hereto, or their respective successors and assigns.

C. Governing Law

This Contract is governed in accordance with the laws of the State of Illinois without regard to choice of law principles. The Contractor hereby irrevocably submits, and causes its Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The Contractor agrees that service of process on the Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor.

D. Consent to Service of Process and Jurisdiction

All judicial proceedings brought against the Contractor with respect to this Contract may be brought in (1) any court of the State of Illinois of competent jurisdiction; and (2) any Federal court of competent jurisdiction having situs within the boundaries of the Federal court district of the Northern District of Illinois, and by execution and delivery of this Contract, the Contractor accepts, for itself and in connection with it properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgement rendered thereby from which no appeal has been taken or is available. The Contractor designates and appoints the representative identified on the signature page hereto under the heading "Designation of Agent for Service Process" as its agent in Chicago, Illinois to receive on its behalf service of all process in any such proceedings in such court (which representative shall be available to receive such service at all times), such service being hereby acknowledged by such representative to effective and binding service in every respect. Said

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~~stated herein may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this Section.~~

I. Authority

1. City's Authority: This Contract is entered into by virtue of the home rule authority conferred on the City under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois or in accordance with the Municipal Purchasing Act for Cities of 500,000 or More Population, as contained in the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq., as amended, and with the Municipal Code of Chicago, as amended.
2. Contractor: Execution of this Contract by the Contractor is authorized and signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Contract, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Contractor must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entities rules and procedures.
3. Consents and Approvals: Unless otherwise expressly stated herein, any consents and ~~approvals to be given by the City are made by the Commissioner.~~

XXIV. SPECIAL CONDITIONS REGARDING MBE/WBE

A. Policy and Terms

1. It is the policy of the City of Chicago that Local Businesses certified as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code shall have the maximum opportunity to participate fully in the performance of this agreement. Therefore the Contractor shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative action to ensure that women and minority businesses shall have the maximum opportunity to compete for and perform subcontracts for supplies or services.

The Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all contracts to certified MBEs and 5% of the annual dollar value of all contracts to certified WBEs.

2. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

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3. Accordingly, unless otherwise specified in Book 2, the Contractor commits to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

<u>Year Advertised</u>	<u>MBE Percentage</u>	<u>WBE Percentage</u>
1991	21.1%	5%
1992	19.5%	4.9%
1993	17.7%	4.8%
after 1993	16.9%	4.5%

4. For purposes of evaluating bidders' responsiveness, the contract MBE and WBE participation goals shall be percentages of the Total Base Bid by the Contractor. However, the MBE and WBE participation goals shall apply to the total value of this contract, including all amendments and modifications. The Chief Procurement Officer also has the authority to review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award or \$50,000 whichever is greater for opportunities to increase participation of MBEs or WBEs already involved in the contract.

Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both a MBE/WBE shall not be credited more than once against a Contractor's MBE or WBE commitment in the performance of the contract.

5. The contract MBE and WBE participation goals may be met by the bidder's status as MBE or WBE, or by joint venture with one or more MBEs and/or WBEs, or by subcontracting a portion of the work to one or more MBEs and/or WBEs, or by purchasing materials used in the performance of the contract from one or more MBEs and/or WBEs or by any combination of the foregoing.
6. The Contractor also may meet part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector projects.

B. Definitions

1. **"Minority Business Enterprise" or "MBE"** means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations.
2. **"Women Business Enterprise" or "WBE"** means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations. (Copies of the Regulations Governing Certification of Minority and Women-

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owned Businesses are available from the Department of Procurement Services, Room 401, 121 N. LaSalle Street, Chicago, Illinois 60602).

3. **"Directory"** means the Directory of Certified "Disadvantaged Business Enterprises" "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the Contract Compliance Administrator. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE and WBE firms.
4. **"Area of Specialty"** means the description of a MBE or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of their Area of Specialty. This information is also contained in the Directory. Credit toward this contract's MBE or WBE participation goal shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within their Area of Specialty. It is the responsibility of all Contractors to determine the capability and capacity of MBE and WBE firms to satisfactorily perform the work proposed.

5. **"Joint Venture"** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Contractors may develop joint venture agreements as an instrument to provide participation by MBEs and WBEs in contract work. A joint venture seeking to be credited for MBE and/or WBE participation may be formed among certified MBE and certified WBE firms or between MBE and/or WBE firm(s) and non-MBE/WBE firm(s).

A joint venture is eligible for MBE and/or WBE credit if the MBE and/or WBE venturer(s) share in the ownership, control, management responsibilities, risks and profits of the joint venture, and are responsible for a clearly defined portion of work to be performed, in proportion with the MBE and/or WBE ownership percentage.

6. **"Contract Compliance Administrator"** means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

C. Joint Ventures

Bidders may develop joint venture agreements as an instrument to provide participation by certified MBEs and WBEs in contract work. A joint venture seeking to be credited for MBE and/or WBE participation may be formed among MBE and/or WBE firms or between a MBE and/or WBE firm and a non-MBE/WBE firm.

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A joint venture is eligible if, and only if, all of the following requirements are satisfied:

- the MBE and/or WBE venturer(s) shares in the (1) ownership, (2) control, (3) management responsibilities, (4) risks and (5) profits of the joint venture in proportion with the MBE and/or WBE ownership percentage;
- the MBE and/or WBE venturer(s) is responsible for a clearly defined portion of work to be performed, in proportion with the MBE and/or WBE ownership percentage; and
- the MBE and/or WBE venturer(s) actually performs (with its own forces and using its own equipment) work equal to at least 50% of the value of its ownership of the joint venture. For example, if the MBE and/or WBE is proposed as a 25% venturer on a \$1,000,000 contract (or subcontract), the MBE and/or WBE must, in addition to its other joint venture responsibilities, perform work equal to at least \$125,000 (or 50% of 25% of \$1,000,000).

The Chief Procurement Officer will evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. In addition, the Chief Procurement Officer shall consider the record of the joint venturers as joint venturers on City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the Joint Venture shall be final.

(Notice: The City requires that, whenever a joint venture is proposed as the prime Contractor, each joint venturer must separately sign the proposal to the City, in the pages below, TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.)

D. Counting MBE and WBE Participation Toward the Contract Goals

MBE and WBE participation shall be counted toward the MBE and/or WBE goals set in this contract as follows:

1. Once a MBE or WBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the MBE or WBE may be counted toward the MBE or WBE goal, except as indicated below.
2. A Contractor may count toward its MBE or WBE goal a portion of the total dollar value of a contract with a joint venture eligible under the standards of this Special Condition equal to the percentage of the ownership and control of the MBE or WBE venturer.
3. A Contractor may count toward its MBE or WBE goal only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing,

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managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Chief Procurement Officer shall evaluate industry practices, and other relevant factors.

4. A Contractor may count toward its MBE or WBE goal sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a MBE or WBE regular dealer, and one hundred percent (100%) of such expenditures to a MBE or WBE manufacturer.

For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

5. A Contractor may count toward its MBE or WBE goal the following expenditures to MBE or WBE firms that are not manufacturers or regular dealers:
 - a. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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E. Procedure to Determine Bid Compliance

The following Schedules and documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

1. **Schedule B: Affidavit Joint Venture (MBE/WBE)**

Where the bidder's MBE/WBE proposal includes the participation of any MBE or WBE as a joint venturer, on any tier, the bidder must submit, together with their bid, a **Schedule B:**

Affidavit of Joint Venture (MBE/WBE) with an attached copy of the joint venture agreement proposed among the parties.

The **Schedule B**, in conjunction with the joint venture agreement must clearly evidence that the MBE or WBE venturer will be responsible for a clearly defined portion of the work to be performed, and that the MBE or WBE firm's responsibilities are in proportion with their ownership percentage. In order to demonstrate the MBE or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the **proposed joint venture agreement shall include specific details related to (1) the contributions of capital and equipment; (2) work items to be performed by the MBE's or WBE's own forces; (3) work items to be performed under the supervision of the MBE or WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE or WBE to be dedicated to the performance of the project.**

The **Schedule B**, together with the joint venture agreement must, in addition, clearly evidence the commitment of the MBE or WBE venturer to actually perform (with its own forces and equipment) work equal to at least fifty percent (50%) of the value of its ownership of the joint venture.

2. **Schedule C: Letter of Intent to Perform as a Subcontractor, Supplier and/or Consultant**

A **Schedule C**, executed by the MBE or WBE firm (or Joint Venture Subcontractor) must be submitted by the bidder for each MBE and WBE included on their **Schedule D**. Each **Schedule C** must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.

If any fully complete and executed **Schedule C** is not or cannot be submitted with the bid, it must be received by the Chief Procurement Officer within three (3) business days after the date of the bid opening. (**All post-bid submissions must have original signatures on all documents**). Failure to submit any **Schedule C** as required by this Section may result in a Chief Procurement Officer's determination that a bid is "non-responsive." The Chief Procurement Officer shall have the discretion to apply suitable sanctions against any

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bidder who fails to comply with these requirements. Appropriate sanctions may include, without limitation, forfeiture of the Contractor's bid deposit, rejection of the Contractor's bid, and suspension of the Contractor's eligibility to enter into future contracting opportunities with the City of Chicago.

3. Letters of Certification

A copy of each proposed MBE and WBE firm's **Letter of Certification** from the City of Chicago must be submitted with the bid.

All **Letters of Certification** issued by the City of Chicago include a statement of the MBE or WBE firm's area of specialization. The MBE or WBE firm's scope of work, as detailed by their **Schedule C** must conform to their stated area of specialization. Where a MBE or WBE is proposed to perform work not covered by their area of certification, they must request a expansion of their certification at least 30 calendar days prior to their being proposed to perform such work. The MBE or WBE firm's request to expand the scope of their certification, together with all documentation required by the City of Chicago to process that request, must be received by the Chief Procurement Officer prior to the bid opening.

4. Schedule D: Affidavit of Prime Contractor Regarding MBEs and WBEs

Bidders must submit, together with the bid, a completed **Schedule D** committing them to the utilization of each listed MBE and WBE firm.

Except in cases where the bidder has submitted a complete request for a waiver or variance of the MBE and WBE goal (See **F. Grant of Relief for Bidders** below), the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE and/or WBE firm included on their **Schedule D**. The total dollar commitment to proposed MBE firms must at least equal the MBE goal. The total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as a percentages of their total base bid.

All commitments made by the bidder's **Schedule D** must conform to those presented in the submitted **Schedule C**. Where **Schedule Cs** will be submitted after the bid opening (See **D.2.above**), the bidder may submit a revised **Schedule D** (executed and notarized) to conform with **Schedule Cs**. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the **Schedules C and D**.

5. The submittal must have all blank spaces on the Schedule pages, applicable to the subject specification, correctly filled in.

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6. Agreements between a bidder and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders are prohibited.
7. During the period before award, the submitted documentation will be evaluated. Furthermore, the bidder agrees to give, upon request, earnest and prompt cooperation to the Chief Procurement Officer and/or Contract Compliance Officer or his authorized delegate in submitting to interviews that may be necessary, or in allowing entry to places of business or in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE in the providing of such assistance. A bid may be treated as non-responsive by reason of the determination that a bidder's proposal contains an insufficient level of MBE or WBE participation, or that the bidder was found to be unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.
8. In cases where the City's review of a bidder's proposal concludes that the MBE and/or WBE proposal was deficient, the bidder will be instructed to submit (within three business days of such notice given by the City) a modification of the MBE and/or WBE Proposal, in proper format, which remedies all the deficiencies cited. The failure to correct all deficiencies as required by this Section may result in a Chief Procurement Officer's determination that a bid is "non-responsive." The Chief Procurement Officer shall have the discretion to apply suitable sanctions against any bidder who fails to comply with these requirements. Appropriate sanctions may include, without limitation, forfeiture of the Contractor's bid deposit, rejection of the Contractor's bid, and suspension of the Contractor's eligibility to enter into future contracting opportunities with the City of Chicago.
9. Bidders will not be permitted to modify their MBE/WBE proposal except insofar as directed to do so by the City. All terms and conditions stipulated for prospective MBE and WBE sub-contractors or suppliers therefore should be satisfactorily negotiated prior to the submission to the City of the bidder's MBE/WBE commitment as part of the bid proposal. If circumstances should arise, however, where a proposed MBE or WBE becomes no longer available, the process described below in the section entitled VIII. DBE Substitutions and Waivers of Requirements should be followed.
10. When necessary in the interest of time, the City may treat as non-responsive a bid instead of granting extended time for a bidder to replace MBEs or WBEs named in the bidder's proposal which were later determined to be ineligible or unavailable.

F. Grant of Relief for Bidders

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the MBE/WBE commitment goals of a particular contract is appropriate. If a bidder or proposer determines that it is unable to meet the MBE and/or WBE percentage

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on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder/proposer's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids have been opened, the lowest responsive and responsible bidder so deemed by the Chief Procurement Officer or authorized designee will have no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein. Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder/proposer; or readvertising the bid/proposal. All bidders/proposers are encouraged to submit all required documents at the time of bid opening to expedite the contract award.

1. Direct/Indirect Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

a. The bidder/proposer has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal. Direct participation involves subcontracting a portion of the goods/services specifically required in the bid/proposal. Indirect participation is the subcontracting of goods/services not specifically related to the performance of this contract. Documentation must include but is not necessarily limited to:

- (1) A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
- (2) A listing of all MBE/WBE firms contacted that includes:
 - (a) Names, address and telephone numbers of MBE/WBE firms solicited;
 - (b) Date and time of contact;

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- (c) Method of contact (written, telephone, transmittal of facsimile documents, etc.)
- (3) Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
 - (a) Project identification and location;
 - (b) Classification/commodity of work items for which quotations were sought;
 - (c) Date, item and location for acceptance of subcontractor bid proposals;
 - (d) Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
 - (e) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve MBE/WBE goals by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on MBE/WBE subcontractors for the type of work that was solicited.

OR

- b. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontract's quote is excessively costly, the bidder/proposer must provide the following information:
 - (1). A detailed statement of the work identified for MBE/WBE participation for which the bidder/proposer asserts the MBE/WBE quote(s) were excessively costly (in excess of 20%).
 - (a) A listing of all potential subcontractors contacted for a quotation on that work item;
 - (b) Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
 - (2) Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (a) The City's estimate for the work under a specific subcontract;
 - (b) The bidder/proposer's own estimate for the work under the subcontract;

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- (c) An average of the bona fide prices quoted for the subcontract;
- (d) Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

2. Assist Agency Participation

Every waiver and/or reduction request must include evidence that the bidder/proposer has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community.

The notice requirement of this Section will be satisfied if a bidder/proposer contacts at least one of the associations on Attachment A to these Regulations when the prime Contractor seeks a waiver or reduction in the utilization goals. Attachment B to these Regulations provides the letter format that a prime Contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Chief Procurement Officer or Contract Compliance Officer may contact the assist agency for verification of notification.

3. Impracticability

- a. If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.
- b. The requirements set forth in these Regulations shall not apply where the Chief Procurement Officer determines that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Procurement Services administrator, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders/proposers, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

- 4. Notification of minority and women Contractor assistance agencies and associations of a solicitation for specific sub-bids;

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5. Direct negotiation with MBEs and/or WBEs for specific sub-bids; the actions taken must be reported in such a fashion as to include all of the following items:
 - a. A detailed statement of the efforts made to negotiate with MBEs and/or WBEs including at a minimum:
 - (1) The name, addresses, and telephone number of MBEs and/or WBEs who were contacted;
 - (2) A description of the information provided to MBEs and/or WBEs who were contacted;
 - (3) A description of the information provided to MBEs and/or WBEs regarding the plans and specifications for portions of the work to be performed; and
 - (4) A detailed statement of the reasons why additional prospective agreements with MBEs and/or WBEs, if needed to meet the stated goal, were not reached in spite of negotiations;
 - b. A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs and/or WBEs in order to increase the likelihood of achieving the stated goal;
 - c. As to each MBE and/or WBE contacted but which the bidder considers to be not qualified, a detailed statement of the reasons for the bidder's conclusion;
6. If the Contractor is a distributor or manufacturer where it can be shown that the opportunity for MBE and/or WBE participation does not exist in work under this contract, efforts must include an exhaustive research into the MBE and/or WBE potential in the roles of sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract. Information must be submitted stating the reasons, based on research, why MBE and/or WBE participation will not be practically possible to the extent of this contract's goal;
7. General efforts made to assist MBEs and WBEs to overcome participation barriers, as indicated in **M. Prime Contractor Assistance**, below.

If the bidder does not meet the MBE and/or WBE goal, price alone shall not be an acceptable basis for which the bidder may reject a MBE and/or WBE sub-bid unless the bidder can show to the satisfaction of the City that no reasonable price can be obtained from a MBE and/or WBE. A determination of reasonable price is based on such factors as the City's estimate for the work under a specific subcontract, the bidder's own estimate for the specific subcontract, and the average of the bona fide prices quoted for the specific subcontract. A MBE or WBE bid for a subcontract will be presumed to be unreasonable if the MBE's or the WBE's price exceeds the average price quoted by more than 15 percent.

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G. Reporting

1. The Contractor shall, within five working days of receiving the awarded contract, execute a formal subcontract or purchase order with the MBEs and WBEs which were proposed all in accordance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and shall promptly submit to the City at that time a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE or WBE.
2. During the life of the project, the Contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors which are drawn up to show the true, cumulative dollar amount of subcontractor payments made to date.
3. The Contractor shall file regular MBE/WBE utilization reports, on Purchases Form M/WBE Status - 1 entitled "Status Report of MBE/WBE (Sub)Contract Payments," according to the following procedure: At the time of signing each monthly payment voucher ("Summary of Estimate"), the Contractor shall present the notarized MBE/WBE Status form executed to reflect the current status of effective and projected payments to MBEs and WBEs. The current voucher will not be processed to the City Comptroller for payment until the current MBE/WBE Status form has been presented.

H. MBE/WBE Substitutions and Waivers of Goals

1. Arbitrary changes by the Contractor of the commitments earlier certified in the Schedule D are prohibited. Further, after once entering into each approved MBE and WBE sub-agreement, the Contractor shall thereafter neither terminate the sub-agreement, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of the City. In some cases, however, it may become necessary to substitute a new MBE or WBE in order actually to fulfill the MBE or WBE requirements. In such cases, the City must be given reasons justifying the release by the City of prior specific MBE or WBE commitments established in the Contractor's bid proposal, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:
 - a. The Contractor must notify the Chief Procurement Officer immediately in writing of an apparent necessity to reduce or terminate a MBE or WBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the MBE/WBE contract goals.
 - b. The Contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following examples: A previous committed MBE or WBE was found not to be able to perform, or not to be able to perform on time; a committed MBE or WBE was found not to be able to produce acceptable work; a committed MBE or WBE was discovered later

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to be not bona fide; a MBE or WBE previously committed at a given price later demands an unreasonable escalation of price.

The Contractor's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: A replacement firm has been recruited to perform the same work under terms more advantageous to the prime contractor; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); a MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

- c. The Contractor's notification should include the names, address, and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents, and Letters of Intent which are required of bidders, as enumerated above in section E. Procedure to Determine Bid Compliance.
 - d. The City will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the City will instead respond as soon as practicable.
 - e. Actual substitution of a replacement MBE or WBE to fulfill contract requirements should not be made before City approval is given of the acceptability of the substitute MBE or WBE subcontract. This subcontract must be executed within five working days, and a copy of the MBE or WBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.
2. The City will not approve extra payment for escalated costs incurred by the Contractor when a substitution of subcontractors becomes necessary for the Contractor in order to comply with MBE/WBE contract requirements.
 3. After award of contract, no relief of the MBE/WBE requirements will be granted by the City except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Contractor to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, etc., as outlined above in section F. Grant of Relief for Bidders.
 4. In a case where an enterprise under contract was previously considered to be a MBE or WBE but is later found not to be, or whose work is found not to be creditable toward

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MBE or WBE goals fully as planned, the City will consider the following special criteria in evaluating a waiver request:

- (a) Whether the prime contractor was reasonable in believing the enterprise was a MBE or WBE or that eligibility or "counting" standards were not being violated;
 - (b) The adequacy of unsuccessful efforts taken to obtain a substitute MBE or WBE (as outlined in section F. Grant of Relief for Bidders).
5. The Chief Procurement Officer solely will determine grants of waiver and all matters of MBE/WBE compliance.

I. Non-Compliance

The following constitutes a material breach of this contract and shall entitle the City to declare a default, terminate the contract and exercise those remedies provided for in the contract, at law or in equity:

1. failure to satisfy the MBE/WBE percentages required by the contract; and
2. the Contractor or subcontractor is disqualified as a MBE or WBE, such status was a factor in contract award, and was misrepresented by the Contractor.

In the event that the Contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the Contractor shall seek to discharge the disqualified subcontractor or supplier, upon proper notification to the Chief Procurement Officer and/or Contract Compliance Administrator and make every effort to identify and engage a qualified MBE or WBE as its replacement. Furthermore, continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due to the Contractor may be withheld until corrective action is taken.

J. Arbitration

1. In the event a Contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the Contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputes between the Contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement

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to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a Contractor and a MBE/WBE.

2. A MBE/WBE desiring to arbitrate shall contact the Contractor in writing to initiate the arbitral process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) days of the Contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
3. All fees of the arbitrator are the initial responsibility of the MBE/WBE; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing MBE/WBE.
4. The MBE/WBE must send the City a copy of the "Demand for Arbitration" within ten (10) days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

K. Penalty for Failure to Meet MBE/WBE Commitments

1. If the Chief Procurement Officer determines, upon reviewing a particular Contract, that the MBE or WBE participation commitments have not been met, a penalty in the amount of the discrepancy between the amount of the commitment, as such amount may be amended through change orders or otherwise over the term of the Contract, and the achieved amount may be applied to the Contractor.
2. Prior to imposing the penalty specified by this section, the Chief Procurement Officer shall notify the Contractor of the fact and amount of the proposed penalty. The Contractor shall have the opportunity to present evidence to the Chief Procurement Officer to controvert the fact or amount of the proposed penalty. Within 15 days of receiving the final decision of the Chief Procurement Officer on the matter, and in the event that such final decision is adverse to the Contractor, the Contractor may submit to the Chief Procurement Officer a written request for a hearing to be conducted by the City's department of administrative hearings.
3. Upon receipt of a timely request for a hearing, the City shall institute an action with the department of administrative hearings, which shall appoint an administrative law officer who shall conduct the hearing within 30 days of receiving the request.
4. The penalty specified by this section shall be imposed either upon expiration of the time period in which the Contractor may seek review by the department of administrative

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hearings, or upon the administrative law officer's finding adverse to the Contractor, as applicable.

5. The City shall use all funds collected as penalties under this section exclusively for development of MBE/WBE programs and encouragement of MBE/WBE participation in the City.
6. In addition to the penalty specified by this section, after a Contractor's second failure to meet MBE/WBE commitments, the Chief Procurement Officer may declare the Contractor ineligible for an award of Contracts for a period of up to three years, following the procedures set forth in subsections 2., 3. and 4. of this section. In determining whether to declare a Contractor ineligible, the Chief Procurement Officer shall take into account the Contractor's record for meeting its commitments regarding MBE/WBE participation in Contracts with the City.

L. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least three years after final acceptance of the work. Full access to these records shall be granted to the City of Chicago, Federal or State authorities in this project, the U.S. Department of Justice, or any duly authorized representatives thereof.

M. Information Sources

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Judith Roussel, District Director
(312) 353-4508

S.B.A. - Bond Guarantee Program
Surety Bonds
500 West Madison, Suite 1250
Chicago, Illinois 60661
Attention: Carole Harris
(312) 353-4003

S.B.A. - Procurement Assistance
500 West Madison, Suite 1250
Chicago, Illinois 60661
Attention: Robert P. Murphy, Area Regional Administrator
(312) 353-7381

City of Chicago
Department of Procurement Services
Contract Monitoring and Compliance
City Hall - Room 403
Chicago, Illinois 60602
Attention: Carnice Carey
(312) 744-1895

City of Chicago
Department of Procurement Services
Contract Administration Division
City Hall - Room 403
Chicago, Illinois 60602
Attention: Byron Whittaker
(312) 744-4926

Terms and Conditions for Construction Contract - Book 1

Directory of Certified Disadvantaged, Minority and Women Business Enterprises:

City of Chicago
Department of Procurement Services
Certification Unit
City Hall - Room 403
Chicago, Illinois 60602
Attention: Lillie Cooper
(312) 744-1896

Information on DBE availability in the manufacturing, sales or supplies, and related fields (direct assistance from 42 regional affiliates located throughout the U.S.):

National Minority Suppliers
Development Council, Inc.
1040 Avenue of the Americas, 2nd floor
New York, New York 10018
Attention: Harriet R. Michell
(212) 944-2430

Chicago Minority Business
Development Council
11 South LaSalle - Suite 850
Chicago, Illinois 60603
Attention: Maye Foster-Thompson
(312) 263-0105

N. Prime Contractor Assistance

Prime Contractors must themselves assist MBEs and WBEs in overcoming barriers to program participation. The following instruments of assistance, for example, should be used as applicable:

1. Developing solicitations of sub-contract bids so as to increase potential MBE and WBE participation. This can take the form of breaking down large subcontracts into smaller ones, and of issuing notice of solicitations in a timely manner;
2. Providing technical assistance and guidance in the bidding, estimating, and scheduling processes;
3. Considering purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise required to perform the work;
4. Providing accelerated payments or establishing pro-rated payment and delivery schedules so as to minimize cash flow problems faced by small firms;
5. Providing, waiving, or reducing subcontractor bonding requirements; allowing stage bonding (bonding carried over from one project stage to the next);
6. Providing a pre-bid conference for potential sub-contractors.

In addition to the employment of minority and women construction enterprises and material suppliers, the Contractor should consider the utilization of MBEs and WBEs in fields indirectly related to construction contracts: banking, office equipment sales, vehicles sales, mechanical repair, legal and accounting services, building security, graphics and advertising, etc.

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O. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as required by law as they relate to Prime Contractor and subcontractor obligations.

P. Assist Agencies

I. Non-Construction Assist Agencies

Latin American
Chamber of Commerce
2539 N. Kedzie - Suite 12
Chicago, Illinois 60647
Attn: D. Lorenzo Padron
Office No.: (773) 252-5211
Fax No.: (773) 252-7065

Women In Business Yellow Pages
819 S Wabash, Suite 606
Chicago, Illinois 60605
Attn: Ida Bialik
Office No.: (847) 679-7800
Fax No.: (847) 679-7845

Asian American
Small Business Association
5023 N. Broadway
Chicago, Illinois 60640
Attn: Charles Soo
Office No.: (773) 728-1030

National Association of Women
Business Owners-Chicago Chap..
175 W. Jackson, Suite 625
Chicago, Illinois 60604
Attn: Sandra Gidley
Office No.: (312) 322-0990
Fax No.: (312) 461-0238

Illinois Dept. of Commerce
and Community Affairs
100 W. Randolph - Suite 3-400
Chicago, Illinois 60601
Attn: Mollie Cole
Office No.: (312) 814-7176
Fax No.: (312) 814-6732

Chicago Minority Business
Development Council
11 S. LaSalle Street - Suite 580
Chicago, Illinois 60603-1202
Attn: Maye Foster Thompson
Office No.: (312) 263-0105
Fax No.: (312) 263-0280

Triton College
Small Bus. Development Center
2000 Fifth Avenue
River Grove, Illinois 60171
Attn: Jeffrey Barnes
Office No.: (708) 456-0300 - Ext. 3593
Fax No.: (708) 583-3118

Cosmopolitan Chamber of Commerce
1326 S. Michigan - Suite 100
Chicago, Illinois 60605-2602
Attn: Consuelo Pope/
Lylah Booker-Hill
Office No.: (312) 786-0212
Fax No.: (312) 786-9079

Exhibit O

Roof Structure

Theater will construct the Roof Structure in accordance with the specifications and drawings listed below. The design criteria for loadings upon the roof structure are described in the General Notes on Drawing S-1 to the project documents.

Specification Sections:

DIVISION 07 - THERMAL AND MOISTURE PROTECTION

07130 - SHEET WATERPROOFING

07140 - FLUID-APPLIED WATERPROOFING

07212 - BOARD AND BATT INSULATION

07260 - VAPOR RETARDERS

07620 - SHEET METAL FLASHING AND TRIM

07631 - GUTTERS AND DOWNSPOUTS

07840 - FIRESTOPPING

07900 - JOINT SEALERS

Drawing Sheets:

VE-A1-9	Upper Randolph Street Plan
VE-A1-10	Grid Level /Terrace Level Plan
VE-A1-11	Roof Level Plan
VE-A2-1	Randolph Street Elevations
VE-A2-2	East & West Elevations
VE-A3-1 thru VE-A3-10	Building Sections
VE-A4-1	Shadowbox Section
VE-A4-3	East Wing Section, top half
VE-A4-5	West Wing Section, top half
VE-A4-8	Stageblock Section ,top half
VE-A4-9	Upper Randolph/East Wing Section
VE-A4-11	Upper Randolph/West Wing Section
VE-A4-14	Core Section, top half
VE-A4-16	West Wing Section, top half
VE-A4-17	Exterior Stairs No. 14 & 15
VE-A4-27	Enlarged Plan, Core Roof
VE-A4-47	Stair Sections, Stair No. 5 & 6, with planter boxes
VE-A5-5	Upper Randolph Sidewalk, plans & elevation
VE-A5-7	Upper Randolph Sidewalk, details
VE-A5-15	Shadowbox details
VE-A5-17	Exterior Stair & Planterbox details
VE-A5-20	Roof Details
VE-A5-21	Roof Details
S-1	General Notes – DC-2 and DC-3

Terrace

