

## Contract Summary Sheet

**Contract (PO) Number:** 15127

**Specification Number:** 58716

**Name of Contractor:** BLACK ENSEMBLE THEATRE CORP

**City Department:** PLANNING & DEVELOPMENT

**Title of Contract:** Redevelopment Agreement

**Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):**

\$6,000,000.00

**PO Start Date:** 2/10/2006

**PO End Date:** 7/9/2022

**Brief Description of Work:** Redevelopment Agreement

**Procurement Services Contact Person:** THOMAS DZIEDZIC

**Vendor Number:** SC000710

**Submission Date:** JUL 05 2007

18

CHICAGO February 8, 2006

**To the President and Members of the City Council:**

Your Committee on Finance **having had under consideration**

a substitute ordinance authorizing entering into and executing  
a Redevelopment Agreement with the Black Ensemble Theater

Amount of Note  
Not to exceed: \$6,000,000

Having had the same under advisement, begs leave to report and recommend that your  
Honorable Body pass the proposed  
substitute ordinance transmitted herewith

This recommendation was concurred in by \_\_\_\_\_ (a viva voce vote  
of members of the committee with \_\_\_\_\_ dissenting vote(s).

Respectfully submitted

(signed) Edward M. Burke  
Chairman



FIN

19

OFFICE OF THE MAYOR  
CITY OF CHICAGO

RICHARD M. DALEY  
MAYOR

January 11, 2006

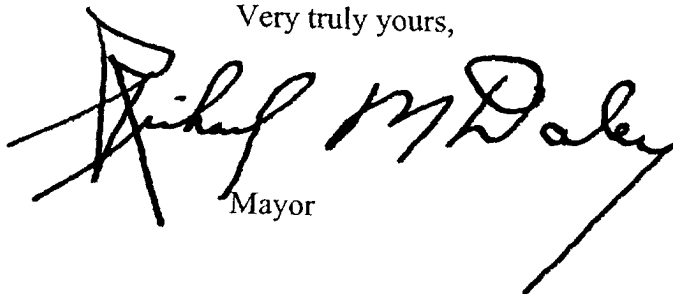
TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance authorizing the execution of a redevelopment agreement with the Black Ensemble Theater regarding property located at 4440-50 North Clark.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

  
Mayor

## SUBSTITUTE ORDINANCE

**WHEREAS**, pursuant to an ordinance adopted by the City Council (“City Council”) of the City of Chicago (the “City”) on July 7, 1999 and published at pages 6342-6417 of the Journal of the Proceedings of the City Council (the “Journal”) of such date, a certain redevelopment plan and project (the “Plan”) for the Clark Street/Montrose Redevelopment Project Area (the “Area”) was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the “Act”); and

**WHEREAS**, pursuant to an ordinance adopted by the City Council on July 7, 1999 and published at pages 6342-6417 of the Journal of such date, the Area was designated as a redevelopment project area pursuant to the Act; and

**WHEREAS**, pursuant to an ordinance (the “TIF Ordinance”) adopted by the City Council on July 9, 1999 and published at pages 6342-6417 of the Journal of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Plan; and

**WHEREAS**, Black Ensemble Theater, an Illinois not-for-profit corporation (the “Company”), is in the process of obtaining land parcels (the “Site”) at real property commonly known as 4440-4450 North Clark Street (the “Property”) located within the Area and shall rehabilitate the existing structure into a new 299-seat performing arts theater (the “Project”); and

**WHEREAS**, the Company has proposed to undertake the redevelopment of the Site in accordance with the Plan and pursuant to the terms and conditions of a proposed redevelopment agreement to be executed by the Company and the City, including but not limited to rehabilitation and construction of the facilities to be financed in part by certain incremental taxes on the Property, if any, deposited in the Clark/Montrose Project Area Tax Allocation Fund (as defined in the TIF Ordinance and referred to herein as the “Fund”) pursuant to Section 5/11-74.4-8(b) of the Act to the extent, and in the amount, provided in the Redevelopment Agreement (hereinafter defined); and

**WHEREAS**, pursuant to Resolution 05-CDC-77 adopted by the Community Development Commission of the City of Chicago (the “Commission”) on August 9, 2005, the Commission authorized the City’s Department of Planning and Development (“DPD”) to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Company for the Project; now therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. The above recitals are incorporated herein and made a part hereof.

SECTION 2. The Company is hereby designated as the developer for the Project pursuant to Section 5/11-74.4-4 of the Act.

SECTION 3. The Commissioner of DPD (the "Commissioner") or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement between the Company and the City substantially in the form attached hereto as Exhibit A and made a part hereof (the "Redevelopment Agreement"), and such other supporting documents as may be necessary to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

SECTION 4. The City Council of the City hereby finds that the City is authorized to issue its tax increment allocation revenue obligation, in one or more notes, in an aggregate principal amount not to exceed \$6,000,000 for the purpose of paying a portion of the eligible costs included within the Project.

SECTION 5. There shall be borrowed for and on behalf of the City a principal amount not to exceed \$6,000,000 for the payment of a portion of the eligible redevelopment project costs (as such term is defined under the Act) included within the Project (such costs shall be known herein and in the Redevelopment Agreement as "TIF-Funded Improvements"). The note of the City in an aggregate principal amount up to \$6,000,000 shall be issued and shall be designated as follows: "Tax Increment Allocation Revenue Note (Clark/Montrose - Black Ensemble Theater Project), Taxable Series 2006" in the maximum aggregate principal amount of \$6,000,000 ("City Note "). The City Note shall be substantially in the form attached to the Redevelopment Agreement as Exhibit M, and made a part hereof, with such additions or modifications as shall be determined to be necessary by the Authorized Officer (the person duly appointed and serving as the Chief Financial Officer of the City, or if no such person has been appointed, then the City Comptroller, being each referred to herein as an "Authorized Officer") of the City, at the time of issuance to reflect the purpose of the issue. The City Note shall be dated the date of delivery thereof, and shall also bear the date of authentication, shall be in fully registered form, shall be in the denomination of the outstanding principal amount thereof and shall become due and payable as provided therein. The proceeds of the City Note are hereby appropriated for the purposes set forth in this Section 5.

The City Note shall mature on the earlier of (i) payment in full; (ii) 20 years from its date of issuance or (iii) December 31, 2022, and shall bear interest at a fixed interest rate as described in the Redevelopment Agreement until the principal amount of each City Note is paid or until maturity, with the exact rate to be determined by the Authorized Officer, computed on the basis of a 360-day year of twelve 30-day months.

The principal of and interest on the City Note shall be paid by check, draft or wire transfer

of funds by the Authorized Officer of the City, as registrar and paying agent (the "Registrar"), payable in lawful money of the United States of America to the persons in whose names the City Notes are registered at the close of business on the payment date, in any event no later than at the close of business on the 15th day of the month immediately after the applicable payment date; provided, that the final installment of the principal and accrued but unpaid interest of the City Note shall be payable in lawful money of the United States of America at the principal office of the Registrar or as otherwise directed by the City on or before the maturity date.

The seal of the City shall be affixed to or a facsimile thereof printed on the City Note, and the City Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any officer whose signature shall appear on the City Note shall cease to be such officer before the delivery of the City Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The City Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the City for the City Note, and showing the date of authentication. The City Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the City Note shall be conclusive evidence that the City Note have been authenticated and delivered under this Ordinance.

SECTION 6. The City shall cause books (the "Register") for the registration and for the transfer of the City Note (to the extent such transfer is permitted under the Redevelopment Agreement) as provided in this Ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the City Note. The City is authorized to prepare, and the Registrar shall keep custody of, multiple City Note blanks executed by the City for use in the transfer of the City Note.

Upon surrender for a transfer of the City Note authorized under the Redevelopment Agreement at the principal office of the Registrar, duly endorsed by, or accompanied by (i) a written instrument or instruments of transfer in form satisfactory to the Registrar, (ii) an investment representation in form satisfactory to the City and duly executed by, the registered owner or his attorney duly authorized in writing, (iii) the written consent of the City evidenced by the signature of the Authorized Officer (or his or her designee) and the Commissioner on the instrument of transfer, and (iv) any deliveries required under the Redevelopment Agreement, the City shall execute and the Registrar shall authenticate, date and deliver in the name of any such authorized transferee or transferees a new fully registered City Note of the same maturity, of authorized denomination, for the authorized principal amount of the City Note less previous retirements. The execution by the City of a fully registered City Note shall constitute full and due authorization of the City Note and the Registrar shall thereby be authorized to authenticate, date and deliver the City Note. The Registrar shall not be required to transfer or exchange a City Note during the period beginning at the

close of business on the fifteenth day of the month immediately prior to the maturity date of the City Note nor to transfer or exchange a City Note after notice calling a City Note for prepayment has been made, nor during a period of five (5) business days next preceding mailing of a notice of prepayment of principal of a City Note. No beneficial interests in a City Note shall be assigned, except in accordance with the procedures for transferring a City Note described above.

The person in whose name each City Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of a City Note shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the City Notes to the extent of the sum or sums so paid.

No service charge shall be made for any transfer of the City Note, but the City or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer of the City Note.

SECTION 7. Subject to the limitations set forth herein, the Authorized Officer is authorized to determine the term of the City Note and to issue the City Note on such terms as the Authorized Officer may deem to be in the best interest of the City. The principal of the City Note shall be subject to prepayment as provided in the form of City Note attached to the Redevelopment Agreement as Exhibit M. As directed by the Authorized Officer, the Registrar shall proceed with prepayment without further notice or direction from the City.

SECTION 8. The City Note hereby authorized shall be executed as in this Ordinance and the Redevelopment Agreement provided as soon after the passage hereof as may be practicable and consistent with the terms of the Redevelopment Agreement, and thereupon, said City Note shall be deposited with the Commissioner, and delivered by the Commissioner to the Developer.

SECTION 9. Pursuant to the TIF Ordinance, the City has created or will create the Fund. The Authorized Officer is hereby directed to maintain the Fund as a segregated interest-bearing account, separate and apart from any other fund of the City, with a bank that is insured by the Federal Deposit Insurance Corporation or its successor. Pursuant to the TIF Ordinance, all Incremental Taxes received by the City for the Area are to be deposited into the Fund.

Pursuant to an ordinance adopted by the City Council on November 8, 2000 (the "SBIF Note Ordinance"), the City issued its Tax Increment Allocation Revenue Note (Clark/Montrose Redevelopment Project) Taxable Series 2000 on January 25, 2001 (the "SBIF Note") to finance redevelopment project costs in the Area for the City's Small Business Improvement Fund Program. Pursuant to the SBIF Note Ordinance, the City created a Note Fund for payment of the SBIF Note, along with the following accounts in the Note Fund: the Principal and Interest Account; the Debt Service Reserve Account; and the General Account. The City anticipates refunding the SBIF Note on or promptly after the date of issuance of the City Note.

There is hereby created within the General Account of the Fund a special subaccount

to be known as the "BET Sub-Account" (the "Project Account"). The City shall designate and deposit into the Project Account the Available Incremental Taxes deposited into the Fund. The City hereby assigns, pledges and dedicates the Project Account, together with all amounts on deposit therein, to the payment of the principal of and interest, if any, on the City Note when due under the terms of the Redevelopment Agreement. Upon deposit, the moneys on deposit in the Project Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the Project Account. All moneys on deposit in the Project Account shall be used to pay the principal of and interest on the City Note at maturity or upon payment or redemption prior to maturity, in accordance with the terms of such note, which payments from the Project Account are hereby authorized and appropriated by the City. Upon payment of all amounts due under City Note and the Redevelopment Agreement in accordance with their terms, the amounts on deposit in the Project Account, as applicable, shall be deposited in the Fund and the Project Account shall be closed.

Notwithstanding any of the foregoing, the City Note shall be subordinate to the SBIF Note, or any note refunding the SBIF Note, and payments on the City Note will be subject to the availability of Available Incremental Taxes in the Project Account.

SECTION 10 . The City Note is a special limited obligation of the City. The City Note are payable solely from amounts on deposit in the Project Account and shall be a valid claim of the registered owner thereof only against said source. The City Note shall not be deemed to constitute an indebtedness or a loan against the general taxing powers or credit of the City, within the meaning of any constitutional or statutory provision. The registered owner(s) of the City Note shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the City Note.

SECTION 11. Moneys on deposit in the Fund or the Project Account, as the case may be, may be invested as allowed under Section 2-32-520 of the Municipal Code of the City of Chicago (the "Municipal Code"). Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the City Note.

SECTION 12. Pursuant to the Redevelopment Agreement, the Developer shall complete the Project. The eligible redevelopment project costs of the Project constituting TIF-Funded Improvements up to the principal amount of \$6,000,000, when evidenced by Certificates of Expenditure shall be deemed to be a disbursement of the proceeds of the City Note. Upon issuance, the City Note shall have in the aggregate an initial principal balance equal to the Developer's prior expenditures for TIF-Funded Improvements up to a maximum amount of \$4,500,000, as evidenced by Certificate of Expenditures delivered in accordance with the Redevelopment Agreement, and subject to the reductions described in the Redevelopment Agreement. After issuance, the principal amount outstanding under the City Note shall be the initial principal balance of the City Note, minus any principal amount and interest paid on the City Note and other reductions in principal as provided in the Redevelopment Agreement.

SECTION 13. The Mayor, the Authorized Officer, the City Clerk, the Commissioner



(or his or her designee) and the other officers of the City are authorized to executed and deliver on behalf of the City such other documents, agreements and certificates and to do such other things consistent with the terms of this Ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this Ordinance.

SECTION 14. The Registrar shall maintain a list of the names and address of the registered owners from time to time of the City Note and upon any transfer shall add the name and address of the new registered owner and eliminate the name and address of the transferor.

SECTION 15. The provisions of this Ordinance shall constitute a contract between the City and the registered owner of the City Note. All covenants relating to the City Note are enforceable by the registered owner of the City Note.

SECTION 16. If any provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this Ordinance.

SECTION 17. All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict. In 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. No provision of the Municipal Code shall be deemed to render voidable at the option of the City any document, instrument or agreement authorized hereunder or to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the rights of the owner(s) of the City Note to receive payment of the principal of or interest on the City Note or impair the security for the City Note; provided further that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Municipal Code.

SECTION 18. This Ordinance shall be in full force and effect immediately upon its passage.

Attachment:

Exhibit A: Redevelopment Agreement

**BLACK ENSEMBLE THEATER  
REDEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF CHICAGO

AND

BLACK ENSEMBLE THEATER

*This agreement was prepared by  
and after recording return to,  
Charles E. Rodgers, Jr., Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 600  
Chicago, IL 60602*

55 7696 / 9900 33511 NHL

## TABLE OF CONTENTS

	PAGE
SECTION 1. RECITALS .....	2
SECTION 2. DEFINITIONS .....	3
SECTION 3. THE PROJECT .....	9
3.01 <u>The Project</u> .....	9
3.02 <u>Scope Drawings and Plans and Specifications</u> .....	9
3.03 <u>Project Budget</u> .....	9
3.04 <u>Change Orders</u> .....	9
3.05 <u>DPD Approval</u> .....	10
3.06 <u>Other Approvals</u> .....	10
3.07 <u>Progress Reports and Survey Updates</u> .....	10
3.08 <u>Inspecting Agent or Architect</u> .....	10
3.09 <u>Barricades</u> .....	10
3.10 <u>Signs and Public Relations</u> .....	10
3.11 <u>Utility Connections</u> .....	11
3.12 <u>Permit Fees</u> .....	11
SECTION 4. FINANCING .....	11
4.01 <u>Total Project Cost and Sources of Funds</u> .....	11
4.02 <u>Developer Funds</u> .....	11
4.03 <u>City Funds</u> .....	11
4.04 <u>Construction Escrow</u> .....	14
4.05 <u>Treatment of Prior Expenditures and Subsequent Disbursements</u> .....	14
4.06 <u>Cost Overruns</u> .....	14
4.07 <u>Execution of Certificate of Expenditure</u> .....	14
4.08 <u>Conditional Grant</u> .....	16
4.09 <u>Cost of Issuance</u> .....	16
SECTION 5. CONDITIONS PRECEDENT .....	16
5.01 <u>Project Budget</u> .....	16
5.02 <u>Scope Drawings and Plans and Specifications</u> .....	16
5.03 <u>Other Governmental Approvals</u> .....	17
5.04 <u>Financing</u> .....	17
5.05 <u>Acquisition and Title</u> .....	17
5.06 <u>Evidence of Clean Title</u> .....	17
5.07 <u>Surveys</u> .....	18
5.08 <u>Insurance</u> .....	18
5.09 <u>Opinion of the Developer's Counsel</u> .....	18
5.10 <u>Evidence of Prior Expenditures</u> .....	18
5.11 <u>Financial Statements</u> .....	18

5.12	<u>Documentation</u>	18
5.13	<u>Environmental</u>	18
5.14	<u>Corporate Documents; Economic Disclosure Statement</u>	18
5.15	<u>Litigation</u>	19
5.16	<u>Mortgage</u>	19
SECTION 6.	AGREEMENTS WITH CONTRACTORS	19
6.01	<u>Bid Requirement for General Contractor and Subcontractors</u>	19
6.02	<u>Construction Contract</u>	19
6.03	<u>Performance and Payment Bonds</u>	19
6.04	<u>Employment Opportunity</u>	19
6.05	<u>Other Provisions</u>	19
SECTION 7.	COMPLETION OF CONSTRUCTION OR REHABILITATION	20
7.01	<u>Certificate of Completion of Construction or Rehabilitation</u>	20
7.02	<u>Effect of Issuance of Certificate; Continuing Obligations</u>	20
7.03	<u>Failure to Complete</u>	20
7.04	<u>Notice of Expiration of Term of Agreement</u>	21
SECTION 8.	COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER	21
8.01	<u>General</u>	21
8.02	<u>Covenant to Redevelop</u>	23
8.03	<u>Redevelopment Plan</u>	23
8.04	<u>Use of City Funds</u>	23
8.05	<u>Other Bonds</u>	23
8.06	<u>Job Creation and Retention</u>	24
8.07	<u>Progress Reports</u>	24
8.08	<u>Employment Profile</u>	24
8.09	<u>Prevailing Wage</u>	24
8.10	<u>Arms-Length Transactions</u>	24
8.11	<u>Conflict of Interest</u>	24
8.12	<u>Disclosure of Interest</u>	25
8.13	<u>Financial Statements</u>	25
8.14	<u>Insurance</u>	25
8.15	<u>Non-Governmental Charges</u>	25
8.16	<u>Developer's Liabilities</u>	26
8.17	<u>Compliance with Laws</u>	26
3.13	<u>Recording and Filing</u>	26
8.19	<u>Real Estate Provisions</u>	26
3.20	<u>Public Benefits Program</u>	28
3.21	<u>Survival of Covenants</u>	29

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY .....	29
9.01 <u>General Covenants</u> .....	29
9.02 <u>Survival of Covenants</u> .....	29
SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS .....	29
10.01 <u>Employment Opportunity</u> .....	29
10.02 <u>City Resident Construction Worker Employment Requirement</u> .....	30
10.03 <u>MBE/WBE Commitment</u> .....	32
SECTION 11. ENVIRONMENTAL MATTERS .....	34
SECTION 12. INSURANCE .....	35
SECTION 13. INDEMNIFICATION .....	39
13.01 <u>General Indemnity</u> .....	39
SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT .....	39
14.01 <u>Books and Records</u> .....	39
14.02 <u>Inspection Rights</u> .....	40
SECTION 15. DEFAULT AND REMEDIES .....	40
15.01 <u>Events of Default</u> .....	40
15.02 <u>Remedies</u> .....	41
15.03 <u>Curative Period</u> .....	41
SECTION 16. MORTGAGING OF THE PROJECT .....	42
SECTION 17. NOTICE .....	43
SECTION 18. MISCELLANEOUS .....	44
18.01 <u>Amendment</u> .....	44
18.02 <u>Entire Agreement</u> .....	44
18.03 <u>Limitation of Liability</u> .....	44
18.04 <u>Further Assurances</u> .....	44
18.05 <u>Waiver</u> .....	44
18.06 <u>Remedies Cumulative</u> .....	45
18.07 <u>Disclaimer</u> .....	45
18.08 <u>Headings</u> .....	45
18.09 <u>Counterparts</u> .....	45
18.10 <u>Severability</u> .....	45
18.11 <u>Conflict</u> .....	45
18.12 <u>Governing Law</u> .....	45
18.13 <u>Form of Documents</u> .....	45
18.14 <u>Approval</u> .....	45
18.15 <u>Assignment</u> .....	45

18.16	<u>Binding Effect</u>	46
18.17	<u>Force Majeure</u>	46
18.18	<u>Exhibits</u>	46
18.19	<u>Business Economic Support Act</u>	46
18.20	<u>Venue and Consent to Jurisdiction</u>	46
18.21	<u>Costs and Expenses</u>	46
18.22	<u>Business Relationships</u>	47

## LIST OF EXHIBITS

Exhibit A	*Redevelopment Area
Exhibit B	*Property
Exhibit C	*TIF-Funded Improvements
Exhibit D	Redevelopment Plan
Exhibit E	Construction Contract
Exhibit F	Escrow Agreement
Exhibit G	*Permitted Liens
Exhibit H-1	*Project Budget
Exhibit H-2	*MBE/WBE Budget
Exhibit I	Approved Prior Expenditures
Exhibit J	Opinion of Developer's Counsel
Exhibit K	*Preliminary TIF Projection -- Real Estate Taxes
Exhibit L	Requisition Form
Exhibit M	*Form of City Note
Exhibit N	*Public Benefits Program
Exhibit O	Form of Subordination Agreement
Exhibit P	Form of Payment Bond

(An asterisk(\*) indicates which exhibits are to be recorded.)

[leave blank 3" x 5" space for recorder's office]

This agreement was prepared by and  
after recording return to:  
Charles E. Rodgers, Jr., Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

## BLACK ENSEMBLE THEATER REDEVELOPMENT AGREEMENT

This Black Ensemble Theater Redevelopment Agreement (this "Agreement") is made as of this 10<sup>th</sup> day of February, 2006, by and between the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), and The Black Ensemble Theater Corporation, an Illinois not-for-profit corporation (the "Developer").

### RECITALS

**A. Constitutional Authority:** As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "State"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

**B. Statutory Authority:** The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.



C. **City Council Authority:** To induce redevelopment pursuant to the Act, the City Council of the City (the "City Council") adopted the following ordinances on July 7, 1999: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Clark/Montrose TIF Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Clark/Montrose TIF Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Clark/Montrose TIF Redevelopment Project Area" (the "TIF Adoption Ordinance") (items(1)-(3) collectively referred to herein as the "TIF Ordinances"). The redevelopment project area referred to above (the "Redevelopment Area") is legally described in Exhibit A hereto.

D. **The Project:** The Developer intends to purchase (the "Acquisition") certain property located within the Redevelopment Area at 4440-4450 North Clark Street, Chicago, Illinois 60640 and legally described on Exhibit B hereto (the "Property"), and, within the time frames set forth in Section 3.01 hereof, shall commence and complete construction of an approximately 34,248 square foot performing arts theater (the "Facility") thereon. The Project will include a 299 seat theater and on-site parking for 42 cars. The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. **Redevelopment Plan:** The Project will be carried out in accordance with this Agreement and the City of Chicago Clark/Montrose TIF Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan(the "Redevelopment Plan") attached hereto as Exhibit D.

F. **City Financing** The City agrees to use, in the amounts set forth in Section 4.03 hereof, (i) the proceeds of the City Note (defined below) and/or (ii) Available Incremental Taxes (as defined below), to pay for or reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement and the City Note.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

## SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

“Act” shall have the meaning set forth in the Recitals hereof.

“Actual residents of the City” shall mean persons domiciled within the City.

“Acquisition” shall have the meaning set forth in the Recitals hereof.

“Affiliate” shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer.

“Agreement” shall mean this Black Ensemble Theater Redevelopment Agreement.

“Available Incremental Taxes” shall mean an amount deposited in the BET Sub-Account of the General Account in the Clark/Montrose TIF Redevelopment Project Area TIF Fund attributable to Incremental Taxes after payment of any amounts due on the SBIF Note.

“Available Project Funds” shall have the meaning set forth for such terms in Section 4.07(g) hereof.

“BET Sub-Account” shall have the meaning set forth in Section 4.03(b).

“Bond(s)” shall have the meaning set forth for such term in Section 8.05 hereof.

“Bond Ordinance” shall mean the City ordinance authorizing the issuance of Bonds.

“Business Relationship” shall have the meaning set forth for such term in Section 18.22 hereof.

“Certificate” or “Certificate of Completion” shall mean the Certificate of Completion of Construction described in Section 7.01 hereof.

“Certificate of Expenditure” shall mean any Certificate of Expenditure referenced in the City Note pursuant to which the principal amount of the City Note will be established. Certificates of Expenditure shall be applied to increase the principal balance of the City Note-Release One up to the maximum amount, before being applied to increase the principal balance of City Note-Release Two.

**“Change Order”** shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budget as described in **Section 3.03**, **Section 3.04** and **Section 3.05**, respectively.

**“City”** shall mean the City of Chicago.

**“City Contract”** shall have the meaning as set for such term in **Section 8.01(I)**.

**“City Council”** shall have the meaning set forth in the Recitals hereof.

**“City Funds”** shall mean the funds paid to the Developer pursuant to the City Note.

**“City Note”** shall mean the City of Chicago Tax Increment Allocation Revenue Note (Clark/Montrose - Black Ensemble Theater Project), Series 2006 to be in the form attached hereto as **Exhibit M**, in the maximum total principal amount of \$6,000,000, issued by the City to the Developer on or as of the date provided herein. The City Note shall bear interest at the City Note Interest Rate.

**“City Note Interest Rate”** shall mean a rate of Seven and Seven Tenths Percent (7.7%).

**“City Note-Release One”** shall mean the amount of the first Certificate of Expenditure for the City Note in the maximum principal amount of Four Million Five Hundred Thousand Dollars (\$4,500,000).

**“City Note-Release One (A)”** shall mean an increase to the amount of the first Certificate of Expenditure for the City Note in an amount equal to or less than the difference between Four Million Five Hundred Thousand Dollars (\$4,500,000) and the actual amount of City Note-Release One.

**“City Note-Release Two”** shall mean the amount of the second Certificate of Expenditure for the City Note in the maximum principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000).

**“Clark/Montrose TIF Fund”** shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

**“Closing Date”** shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

**“Construction Contract”** shall mean that contract, to be attached hereto as **Exhibit E**, to be entered into between the Developer and the General Contractor providing for construction of the Project, in accordance with the terms of section 6.02.

**“Corporation Counsel”** shall mean the City’s Office of Corporation Counsel.

**“DPD”** shall mean the Department of Planning and Development.

**“Developer”** shall mean The Black Ensemble Theater Corporation.

**“Department”** shall mean the Department of Planning and Development.

**“Employer(s)”** shall have the meaning set forth in **Section 10** hereof.

**“Environmental Laws”** shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called “Superfund” or “Superlien” law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago.

**“Equity”** shall mean funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in **Section 4.01** hereof, which amount may be increased pursuant to **Section 4.06** (Cost Overruns) or **Section 4.03(b)**.

**“Escrow”** shall mean the construction escrow established pursuant to the Escrow Agreement.

**“Escrow Agreement”** shall mean the Escrow Agreement establishing a construction escrow, to be entered into by the City, the Title Company (or an affiliate of the Title Company), the Developer and the Developer’s lender(s), substantially in the form of **Exhibit F** attached hereto.

**“Event of Default”** shall have the meaning set forth in **Section 15** hereof.

**“Facility”** shall have the meaning set forth in the Recitals hereof.

**“Financial Statements”** shall mean complete audited financial statements of the Developer prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

**“General Account”** shall mean the General Account established pursuant to the ordinance authorizing the issuance of the SBIF Note.

**“General Contractor”** shall mean Pepper Construction Company.

**“Hazardous Materials”** shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

**“Human Rights Ordinance”** shall have the meaning set forth for such term in **Section 10.01** hereof.

**“In Balance”** shall have the meaning set forth for such terms in **Section 4.07(g)** hereof.

**“Incremental Taxes”** shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the Clark/Montrose Redevelopment TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

**“Indemnitee”** shall have the meaning set forth for such term in **Section 13.01** hereof.

**“Indemnitees”** shall have the meaning set forth for such term in **Section 13.01** hereof.

**“Lender Financing”** shall mean funds borrowed by the Developer from lenders and irrevocably available to pay for Costs of the Project, in the amount set forth in **Section 4.01** hereof.

**“MBE(s)”** shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

**“MBE/WBE Budget”** shall mean the budget attached hereto as **Exhibit H-2**, as described in **Section 10.03**.

**“MBE/WBE Program”** shall have the meaning set forth in **Section 10.03** hereof.

**“Municipal Code”** shall mean the Municipal Code of the City of Chicago.

**“Non-Governmental Charges”** shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer, the Property or the Project.

**“Permitted Liens”** shall mean those liens and encumbrances against the Property and/or the Project set forth on **Exhibit G** hereto.

**“Permitted Mortgage”** shall have the meaning set forth in **Section 16** hereof.

**“Plans and Specifications”** shall mean final construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

**“Prior Expenditure(s)”** shall have the meaning set forth in **Section 4.05(a)** hereof.

**“Project”** shall have the meaning set forth in the Recitals hereof.

**“Project Budget”** shall mean the budget attached hereto as **Exhibit H**, showing the total cost of the Project by line item, furnished by the Developer to DPD, in accordance with **Section 3.03** hereof.

**“Property”** shall have the meaning set forth in the Recitals hereof.

**“Qualified Investor”** means a qualified institutional buyer (“QIB”) or a registered investment company, or a trust where certificates of participation are sold to QIBs or registered investment companies.

**“Qualified Transfer”** means (i) the pledge of either City Note to a lender providing Lender Financing or (ii) the sale or assignment of either City Note, as long as (a) any sale or assignment is to a Qualified Investor with no view to resale or reassignment, or the City has given its prior written consent to such proposed sale or assignment and (b) any sale or assignment is subject to the terms and procedures of an acceptable investment letter, and (c) any such sale or assignment occurs after the issuance of the Certificate.

**“Redevelopment Area”** shall have the meaning set forth in the Recitals hereof.

**“Redevelopment Plan”** shall have the meaning set forth in the Recitals hereof.

**“Redevelopment Project Costs”** shall mean redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

**“Requisition Form”** shall mean the document, in the form attached hereto as **Exhibit L**, to be delivered by the Developer to DPD.

**“Scope Drawings”** shall mean preliminary construction documents containing a site plan and preliminary drawings and specifications for the Project.

**“SBIF Note”** shall mean the Small Business Investment Fund Note (Clark/Montrose Redevelopment Project), Taxable Series, 2000, issued January 24, 2001 in the principal amount of

\$750,000 (and having a balance of \$1,140, 682.00 as of June 30, 2005) with Bank One as the Registered Owner, or any obligation secured by Incremental Taxes which refinances the SBIF Note.

“State” shall mean the State of Illinois.

“Survey” shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility and related improvements as required by the City or lender(s) providing Lender Financing).

“Term of the Agreement” shall mean the period of time commencing on the Closing Date and ending July 9, 2022.

“TIF Adoption Ordinance” shall have the meaning set forth in the Recitals hereof.

“TIF Bonds” shall have the meaning set forth in the Recitals hereof.

“TIF Bond Ordinance” shall have the meaning set forth in the Recitals hereof.

“TIF-Funded Improvements” shall mean those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. Exhibit C lists the TIF-Funded Improvements for the Project.

“TIF Ordinances” shall have the meaning set forth in the Recitals hereof.

“Title Company” shall mean Ticor Title Insurance Company.

“Title Policy” shall mean a title insurance policy in the most recently revised ALTA or equivalent form, showing the Developer as the insured, noting the recording of this Agreement as an encumbrance against the Property, and a subordination agreement in favor of the City with respect to previously recorded liens against the Property related to Lender Financing, if any, issued by the Title Company.

“WARN Act” shall mean the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

“WBE(s)” shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City’s Department of Procurement Services, or otherwise certified by

the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

### SECTION 3. THE PROJECT

**3.01 The Project.** With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of Section 18.17 hereof: (i) commence construction no later than April 1, 2007; and (ii) complete construction and conduct business operations therein no later than June 1, 2008, or such time provided by agreement of the parties.

**3.02 Scope Drawings and Plans and Specifications.** The Developer shall deliver the Scope Drawings and Plans and Specifications to DPD and DPD must approve the same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to Section 3.04 hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. The Developer shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

**3.03 Project Budget.** The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Thirteen Million Five Hundred Fifty Seven Thousand Two Hundred Thirteen Dollars (\$13,557,213). The Developer hereby certifies to the City that (a) the City Funds, together with Lender Financing and Equity described in Section 4.02 hereof, shall be sufficient to complete the Project. The Developer hereby certifies to the City that (a) it will use every reasonable effort to secure Lender Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to Section 3.04 hereof.

**3.04 Change Orders** Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by the Developer to DPD concurrently with the progress reports described in Section 3.07 hereof; provided, that any Change Order relating to any of the following must be submitted by the Developer to DPD for DPD's prior written approval: (a) a reduction in the square footage of the Facility; (b) a change in the use of the Property to a use other than a community theater; or (c) a delay in the completion of the Project; or Change Orders costing more than \$100,000 each, to an aggregate amount of \$500,000. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DPD's written approval (to the extent required in this section).



**3.05 DPD Approval.** Any approval granted by DPD of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DPD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

**3.06 Other Approvals.** Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Developer's obligations to comply with the provisions of **Section 5.03** (Other Governmental Approvals) hereof. The Developer shall not commence construction of the Project until the Developer has obtained all necessary permits and approvals (including but not limited to DPD's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required hereunder.

**3.07 Progress Reports and Survey Updates.** The Developer shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**). The Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property. The Developer shall provide monthly reports on MBE/WBE utilization, prevailing wage and City residency compliance along with a plan to address any shortfall.

**3.08 Inspecting Agent or Architect.** An independent agent or architect (other than the Developer's architect) approved by DPD shall be selected to act as the inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DPD, prior to requests for disbursement for costs related to the Project hereunder. Developer must forward DPD a copy of all lender inspection architects reports.

**3.09 Barricades.** Prior to commencing any construction requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. DPD retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

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

**3.11 Utility Connections.** The Developer may connect all on-site water, sanitary, storm and sewer lines constructed on the Property to City utility lines existing on or near the perimeter of the Property, provided the Developer first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

**3.12 Permit Fees.** In connection with the Project, the Developer shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

## SECTION 4. FINANCING

**4.01 Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$13,557,213, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to <u>Sections 4.03(b) and 4.06</u> )	\$7,557,213 <sup>1</sup>
Lender Financing	<u>\$6,000,000</u>
<b>ESTIMATED TOTAL</b>	<b>\$13,557,213</b>

**4.02 Developer Funds.** Equity and/or Lender Financing may be used to pay any Project cost, including but not limited to Redevelopment Project Costs.

### **4.03 City Funds.**

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to Sections 4.03(b) and 4.05(d)), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost

(b) Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to reimburse the Developer for TIF-eligible expenses up to a maximum of Six Million Dollars (\$6,000,000) (the "City Funds"). On the

---

<sup>1</sup> Subject to the consent of the Commissioner, a portion of the Equity may be provided as additional Lender Financing secured by a first priority mortgage on the Property.

Closing Date, the City will establish a sub-account for this Project within the General Account of the Clark/Montrose TIF Fund known as "BET Sub-Account." The City's financial commitment will be as follows:

(i) City Note. (A) The City will issue the City Note to the Developer on the Closing Date in an initial principal amount not to exceed the lesser of: (I) Four Million Five Hundred Thousand Dollars (\$4,500,000) (the "Maximum Release One Amount") or (ii) an amount equal to the costs of the TIF-eligible expenses which have been incurred by the Developer by the Closing Date and are to be reimbursed by the City through payments of principal and interest on the City Note, subject to the provisions hereof ("City Note-Release One").

In the event that the TIF-eligible costs as of the Closing Date are less than the Maximum Release One Amount, the City may upon request from the Developer, authorize one additional increase of the principal amount of the City Note up to an amount equal to the Maximum Release One Amount. This second release will hereinafter be referred to as "City Note-Release One (A)". City Note-Release One (A) shall reflect only those amounts used for design and architectural engineering costs related to the Project.

On the date that the Developer closes on additional Lender Financing which brings the total amount of Lender Financing to an amount necessary to complete the Project, the City will issue a Certificate of Expenditure and increase the principal amount of the City Note up to an amount equal to the costs of the TIF-eligible expenses which have been incurred by the Developer, up to a maximum amount of \$6,000,000, but only if (i) such amount is necessary to complete construction of the Project and (ii) the Developer has spent all of its Equity and proceeds of Lender Financing. This reimbursement of TIF eligible expenses will be a reimbursement by the City through payments of principal and interest on the City Note, subject to the provisions hereof ("City Note-Release Two").

The amount of Equity raised by the Developer in excess of \$7,557,213 shall be deducted from the principal amount of City Note-Release Two in accordance with the following: for each dollar of savings due to the reduction in Project costs or increase in Equity fundraising, the City will claim 60% of that savings first against City Note-Release Two, and then secondly against City Note-Release One. For the purpose of this paragraph, the amount of \$7,557,213 shall be increased by an amount equal to the sum of (1) any increase in the acquisition costs of the Property, including acquisition related Redevelopment Project Costs, and (2) any change orders and cost overruns approved by DPD. The City's share of such savings shall be made by Developer through payment to the City or credit against the City Note, as applicable, provided that, subsequent to a Qualified Transfer of the City Note, the City will no

longer be entitled to receive a credit against the City Note, in which case the City's share of such savings shall be made by Developer through payment to the City.

Payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the BET Sub-Account being sufficient for such payments. TIF-eligible costs, the Developer's request for reimbursement and City's outstanding balance on the Note will be certified to the City Note on the Closing Date and upon completion pursuant to Section 4.04. Interest on City Note-Release One will accrue at the City Note Interest Rate upon the issuance of the City Note and will compound annually. Payments of principal of and interest on the City Note shall be made as set forth below, provided that with respect to City Note-Release Two, no payments shall be made, nor shall interest accrue, until the Developer has provided a complete report to DPD of its substantial progress in fundraising efforts and evidences that it is in compliance with the requirements of Section 8.09 and 10. The actual date of City Note-Release Two shall be set by DPD.

(ii) Payments on the City Note. The City Note attached hereto as Exhibit M will have a maximum term of twenty years. The first payment with respect to the City Note shall be made on March 1, 2007 (from Available Incremental Taxes received by the City in the prior year). Thereafter, annual payments shall be made on the later to occur of March 1<sup>st</sup> of each subsequent calendar year or two months after the City's receipt of a Requisition Form. If, in any year, the City does not make such scheduled annual payment, then, in the next year (and if required, any subsequent years), Available Incremental Taxes shall first be applied to repay any shortfall amounts, and then applied to make such year's scheduled annual payment. In the event Available Incremental Taxes are more than sufficient to pay the scheduled annual payment (and no shortfall amounts remain unpaid), the City, in its sole discretion, may elect to use such excess Available Incremental Taxes to prepay the City Note or for any other legal use that the City may deem necessary or appropriate. The City Note may be prepaid in whole or in part, without premium or penalty, at any time.

If the Developer defaults pursuant to Section 15.01, and is not cured or is not subject to a cure period, the City shall have the remedies set forth in Sections 7.03 and 15.02. Notwithstanding anything to the contrary contained in this Agreement, after a Qualified Transfer of the City Note, if an Event of Default or failure of condition occurs, the City will, notwithstanding such Event of Default or failure of condition, continue to make payments with respect to such City Note.

(iii) Transfer of City Note. After its issuance, the City Note may be pledged to a lender providing Lender Financing, but may not be sold without the consent of the Commissioner of DPD, which consent shall be in the Commissioner's reasonable discretion.

Any payments which the Developer shall direct the City to make to a lender providing Lender Financing are subject to the conditions set forth in this Agreement, including but not limited to Section 18.15, and in the City Note.

(iv) Other Incremental Taxes. Any Incremental Taxes that either (a) are not Available Incremental Taxes or (b) are not required to make payments under this Agreement (whether because all currently due payments have been made, because of the failure of the City Note to issue, because of the full repayment of the City Note, or otherwise) shall belong to the City and may be pledged or used for such purposes as the City deems necessary or appropriate.

(v) Mortgage. Developer agrees to give the City a mortgage on the Property to secure its obligations under this Agreement. This mortgage will be subordinated to any mortgage required by Lender Financing, until such Lender Financing mortgage is released. At the time of such release, the City's mortgage will be in first lien position. However, Developer may enter into a "New Mortgage" for any purpose, as defined later in Section 16, if it does not exceed 25% of the value of the Property at such time (as determined by an appraisal satisfactory to DPD) and is related to theater programming (including community theater outreach or improvement of the facility) provided that Developer provides written notice to DPD not less than 45 days prior to the anticipated recording date of such New Mortgage. Notwithstanding anything to the contrary in Section 16(c), DPD will forward any objections within 30 days of such notice or the New Mortgage will be deemed approved.

(vi) Priority of the Available Incremental Taxes. The funds deposited by the City into the BET Sub-Account shall be used exclusively to make the payments on the City Note. The funds deposited in the BET Sub-Account shall be all those funds remaining after Incremental Taxes are used to make payments of any amounts due under the SBIF Note. Nothing in this Section 4.03 (b)(vi) shall be deemed to alter or revise any part of this Redevelopment Agreement unless specifically needed to effect the priority of the Available Incremental Taxes as set forth herein.

(vii) Developer Payment Letter of Direction. Developer may direct the City to make payments due under the City Note as directed in writing (the "Developer Payment Letter of Direction") to any lender providing Lender Financing. The Developer Payment Letter of Direction may be irrevocable and direct the City not to recognize any revision or change in the Developer Payment Letter of Direction unless said revision or change is in writing and signed by both the Developer and the lender.

**4.04 Construction Escrow**. If the lender requires disbursements of Lender Financing through an Escrow Agreement, the City and the Developer hereby agree that both parties shall also enter into the Escrow Agreement. All disbursements of Project funds (except for the Prior Expenditures and acquisition costs disbursed through a deed and money escrow at the closing) shall

be made through the funding of draw requests with respect thereto pursuant to the Escrow Agreement and this Agreement. In case of any conflict between the terms of this Agreement and the Escrow Agreement, the terms of this Agreement shall control. The City shall be a party to the Escrow Agreement solely for the purpose of receiving copies of any draw requests and related documents submitted to the Title Company for disbursements under the Escrow Agreement, but shall not have the right to approve disbursements under it.

#### **4.05 Treatment of Prior Expenditures and Subsequent Disbursements.**

(a) **Prior Expenditures.** Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the "**Prior Expenditures**"). DPD shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. **Exhibit I** hereto sets forth the prior expenditures approved by DPD as of the Closing Date as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to the Developer, but shall reduce the amount of Equity and/or Lender Financing required to be contributed by the Developer pursuant to **Section 4.01** hereof.

(b) **Purchase of Property.** A portion of the purchase price of the Property in an amount not to exceed \$3,600,000, shall be included in the Certificate of Expenditure on the Closing Date as a TIF-Funded Improvement, along with other acquisition-related Redevelopment Project Costs.

**4.06 Cost Overruns.** If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to **Section 4.03** hereof, or if the cost of completing the Project exceeds the Project Budget, the Developer shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

**4.07 Execution of Certificate of Expenditure.** Prior to each execution of a Certificate of Expenditure by the City certifying the value of the City Note, the Developer shall submit documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its sole discretion. Delivery by the Developer to DPD of any request for execution by the City of a Certificate of Expenditure hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that:

(a) the total amount of request for Certificate of Expenditure represents the actual cost of the Acquisition or the actual amount payable to (or paid to) the General Contractor and/or subcontractors who have performed work on the Project, and/or their payees;

(b) all amounts shown as previous payments on the current request for Certificate of Expenditure have been paid to the parties entitled to such payment;

(c) the Developer has approved all work and materials for the current request for Certificate of Expenditure and such work and materials conform to the Plans and Specifications;

(d) the representations and warranties contained in this Redevelopment Agreement are true and correct and the Developer is in compliance with all covenants contained herein;

(e) the Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens;

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(g) the Project is In Balance. The Project shall be deemed to be in balance ("In Balance") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "Available Project Funds" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any execution of a Certificate of Expenditure by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer. In addition, the Developer shall have satisfied all other preconditions of disbursement of City Funds to Developer for each disbursement and execution of a Certificate of Expenditure, including but not limited to requirements set forth in the Bond Ordinance, if any, TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement and/or the Escrow Agreement. Notwithstanding the foregoing, upon the Qualified Transfer of the City Note, to the lender providing Lender Financing, all conditions to the obligations of the City to make payments of City Funds with respect to the City Note shall be deemed satisfied.

**4.08 Conditional Grant.** The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement.

**4.09 Cost of Issuance.** The Developer shall be responsible for paying all costs relating to the issuance of the City Note, including costs relating to the opinion described in Section 5.09(b) hereof.

## SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

**5.01 Project Budget.** The Developer has submitted to DPD, and DPD has approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

**5.02 Scope Drawings and Plans and Specifications.** The Developer has submitted to DPD, and DPD has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of Section 3.02 hereof.

**5.03 Other Governmental Approvals.** The Developer has secured all necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation that can reasonably be obtained prior to the Closing Date and has submitted evidence thereof to DPD. The Developer will secure all other approvals and permits required to be obtained as needed to proceed with the Project (including construction) as set forth herein and will promptly submit evidence thereof to DPD.

**5.04 Financing.** The Developer has furnished proof reasonably acceptable to the City that the Developer has used its best efforts to secure Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with the Equity set forth in Section 4.01) to complete the Project. Prior to closing, Developer must provide a written board approved plan for fundraising to DPD. The Developer agrees that it will provide monthly reports to DPD of all fundraising efforts, including reports generated by third parties. If the Developer obtains Lender Financing to complete the Project, the City Note and related mortgage will be subordinated to second lien position to such financing. The Developer will deliver to DPD a copy of the construction escrow agreement entered into by the Developer regarding the Lender Financing. With the exception of Lender Financing, any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

**5.05 Acquisition and Title.** On the Closing Date, the Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Developer as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on Exhibit G hereto and evidences the recording of this Agreement pursuant to the provisions of Section 8.18 hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's



comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey. The Developer has provided to DPD, on or prior to the Closing Date, documentation related to the purchase of the Property and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

**5.06 Evidence of Clean Title.** The Developer, at its own expense, has provided the City with searches under the Developer's name as follows:

Secretary of State	UCC search
Secretary of State	Federal tax search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax search
Cook County Recorder	State tax search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

showing no liens against the Developer, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.

**5.07 Surveys.** The Developer has furnished the City with three (3) copies of the Survey.

**5.08 Insurance.** The Developer, at its own expense, has insured the Property in accordance with Section 12 hereof, and has delivered certificates required pursuant to Section 12 hereof evidencing the required coverages to DPD.

**5.09 Opinion of the Developer's Counsel.** On the Closing Date, the Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit J, with such changes as required by or acceptable to Corporation Counsel. If the Developer has engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in Exhibit J hereto, such opinions were obtained by the Developer from its general corporate counsel.

**5.10 Evidence of Prior Expenditures.** The Developer has provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures in accordance with the provisions of Section 4.05(a) hereof.

**5.11 Financial Statements.** The Developer has provided Financial Statements to DPD for 2003 and 2004, and audited or unaudited interim financial statements for 2005.

**5.12 Documentation.** The Developer has provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters, fundraising efforts and compliance with Sections 8.09 and 10.

**5.13 Environmental.** The Developer has provided DPD with copies of that certain phase I environmental audit completed with respect to the Property and any phase II environmental audit with respect to the Property required by the City. The Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

**5.14 Corporate Documents; Economic Disclosure Statement.** The Developer has provided a copy of its Articles or Certificate of Incorporation containing the original certification of the Secretary of State of its state of incorporation; certificates of good standing from the Secretary of State of its state of incorporation and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws of the corporation; and such other corporate documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

**5.15 Litigation.** The Developer has provided to Corporation Counsel and DPD, a description of all pending or threatened litigation or administrative proceedings involving the Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

**5.16 Mortgage.** The Developer has provided to DPD a mortgage on the Property, in form and substance satisfactory to DPD and the Corporation Counsel.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

**6.01 Bid Requirement for General Contractor and Subcontractors.** [Intentionally Omitted].

**6.02 Construction Contract.** Prior to the execution thereof, the Developer shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to handle the Project for DPD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such contract by the Developer, the General Contractor and any other parties thereto, the Developer shall deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

**6.03 Performance and Payment Bonds.** Prior to commencement of construction of any portion of the Project, the Developer shall require that the General Contractor be bonded for its performance and payment by sureties having an AA rating or better using American Institute of Architect's Form No. A311 or its equivalent. Prior to the commencement of any portion of the Project which includes work on the public way, the Developer shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better using a bond in the form attached as Exhibit P hereto. The City shall be named as obligee or co-obligee on any such bonds.

**6.04 Employment Opportunity.** The Developer shall contractually obligate and cause the General Contractor and each subcontractor to agree to the provisions of Section 10 hereof.

**6.05 Other Provisions.** In addition to the requirements of this Section 6, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to Section 3.04 (Change Orders), Section 8.09 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement) Section 10.03 (MBE/WBE Requirements, as applicable), Section 12 (Insurance) and Section 14.01 (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof.

## **SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION**

**7.01 Certificate of Completion of Construction or Rehabilitation.** Upon completion of the construction of the Project in accordance with the terms of this Agreement and after the final disbursement from the Escrow, and upon the Developer's written request, DPD shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to the Developer's written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures.

**7.02 Effect of Issuance of Certificate; Continuing Obligations.** The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at Section 8.19 as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to Section 18.15 of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

**7.03 Failure to Complete.** If the Developer fails to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

(a) the right to terminate this Agreement, provided, however, the City shall not suspend or cease disbursement of principal and interest payments on the City Note that has been issued pursuant this Agreement;

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of excess City Funds remaining after payment of the amounts due under the City Note and the SBIF Note or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, the Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek any remedies set forth in Section 15.02.

**7.04 Notice of Expiration of Term of Agreement.** Upon the expiration of the Term of the Agreement, DPD shall provide the Developer, at the Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

## **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER.**

**8.01 General.** The Developer represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

(a) the Developer is an Illinois not-for-profit corporation duly organized, validly existing, qualified to do business in the State of Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

(b) the Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its Articles of Incorporation or by-laws/ as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Developer shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to Section 8.15 hereof)

(e) the Developer is now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

(f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Developer which would impair its ability to perform under this Agreement;

(g) the Developer has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project;

(h) the Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound;

(i) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of the Developer, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of the Developer since the date of the Developer's most recent Financial Statements;

(j) prior to the issuance of a Certificate, the Developer shall not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of the Developer's business; (4) assume, guarantee, endorse, or otherwise become

liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget; and;

(l) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City; and

(m) neither the Developer nor any affiliate of the Developer 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. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, 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.

**8.02 Covenant to Redevelop.** Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in Sections 3.02 and 3.03 hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer. Notwithstanding anything to the contrary contained herein, any change to the nature or type of Project contemplated by the Plans and Specifications as set forth in this Section by a transferee by foreclosure or deed in lieu of an Existing Mortgage must obtain written approval by the City, which shall not be unreasonably withheld, delayed or conditioned.

**8.03 Redevelopment Plan.** The Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan.

**8.04 Use of City Funds.** City Funds disbursed to the Developer shall be used by the Developer solely to pay for (or to reimburse the Developer for its payment for) the TIF-Funded Improvements as provided in this Agreement.

**8.05 Bonds.** The Developer shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements, the "**Bonds**"; provided, however, that any such amendments shall not have a material adverse effect on the Developer or the Project. The Developer shall, at the Developer's expense, cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto.

**8.06 Job Creation.** [Intentionally omitted].

**8.07 Progress Report.** The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in **Section 10** hereof. The Developer shall deliver to the City monthly written progress reports detailing compliance with the requirements of **Sections 8.09, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.

**8.08 Employment Profile.** The Developer shall submit, and contractually obligate and cause the General Contractor or any subcontractor to submit, to DPD, from time to time, statements of its employment profile upon DPD's request.

**8.09 Prevailing Wage.** The Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this **Section 8.09**.

**8.10 Arms-Length Transactions.** Unless DPD has given its prior written consent with respect thereto, no Affiliate of the Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. The Developer shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer and reimbursement to the Developer for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement.

**8.11 Conflict of Interest.** Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person; as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business, the Property or any other property in the Redevelopment Area.

**8.12 Disclosure of Interest.** The Developer's counsel has no direct or indirect financial ownership interest in the Developer, the Property or any other aspect of the Project.

**8.13 Financial Statements.** The Developer shall obtain and provide to DPD the most current available Financial Statements for the last three fiscal years and each year thereafter for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

**8.14 Insurance.** The Developer, at its own expense, shall comply with all provisions of **Section 12** hereof.

**8.15 Non-Governmental Charges.** (a) Payment of Non-Governmental Charges. Except for the Permitted Liens, the Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Developer shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question.

(b) Right to Contest. The Developer has the right, before any delinquency occurs:



(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.15); or

(ii) at DPD's sole option; to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

**8.16 Developer's Liabilities.** The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer to any other person or entity. The Developer shall immediately notify DPD of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

**8.17 Compliance with Laws.** To the best of the Developer's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, the Developer shall provide evidence satisfactory to the City of such compliance.

**8.18 Recording and Filing.** The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of the county in which the Project is located. This Agreement shall be recorded prior to any mortgage made in connection with Lender Financing. The Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

**8.19 Real Estate Provisions.**

(a) Governmental Charges.

(i) Payment of Governmental Charges. The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed

upon the Developer, the Property or the Project, or become due and payable, and which create, may create, a lien upon the Developer or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to the Developer, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. The Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. The Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in Section 8.19(c) below; provided, that such real estate taxes must be paid in full when due and may be disputed only after such payment is made. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to DPD of the Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

(i) the Developer shall demonstrate to DPD's satisfaction that legal proceedings instituted by the Developer contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the Property to satisfy such Governmental Charge prior to final determination of such proceedings; and/or

(ii) the Developer shall furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

(b) Developer's Failure To Pay Or Discharge Lien. If the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise DPD thereof in writing, at which time DPD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPD by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental

Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

(c) Real Estate Taxes

(i) Acknowledgment of Real Estate Taxes. The Developer agrees that (A) for the purpose of this Agreement, the total projected minimum assessed value of the Property that is necessary to support the debt service indicated ("Minimum Assessed Value") is shown on Exhibit K attached hereto and incorporated herein by reference for the years noted on Exhibit K; (B) Exhibit K sets forth the specific improvements which will generate the fair market values, assessments, equalized assessed values and taxes shown thereon]; and (C) the real estate taxes anticipated to be generated and derived from the respective portions of the Property and the Project for the years shown are fairly and accurately indicated in Exhibit K.

(ii) Real Estate Tax Exemption. With respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect.

(iii) No Reduction in Real Estate Taxes. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in Exhibit K for the applicable year.

(iv) No Objections. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Underassessment Complaint or subsequent proceedings related thereto with the Cook County Assessor or with the Cook County Board of Appeals, by either the City or any taxpayer. The term "Underassessment Complaint" as used in this Agreement shall mean any complaint seeking to increase the assessed value of the Property up to (but not above) the Minimum Assessed Value as shown in Exhibit K.

(v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.19(c) are covenants running with the land and this Agreement shall be recorded by the Developer as a memorandum thereof, at the Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon the Developer and its agents, representatives, lessees, successors, assigns and

transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Developer agrees that any sale, lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.19(c) to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of the Developer, its successors or assigns, may waive and terminate the Developer's covenants and agreements set forth in this Section 8.19(c).

**8.20 Public Benefits Program.** The Developer shall, beginning on January 1, 2007, undertake a public benefits program as described on Exhibit N. On a semi-annual basis, the Developer shall provide the City with a status report describing in sufficient detail the Developer's compliance with the public benefits program.

**8.21 Survival of Covenants.** All warranties, representations, covenants and agreements of the Developer contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in Section 7 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

## SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

**9.01 General Covenants.** The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder.

**9.02 Survival of Covenants.** All warranties, representations, and covenants of the City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

## SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

**10.01 Employment Opportunity.** The Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer operating on the Property (collectively, with the Developer, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined

in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "**Human Rights Ordinance**"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 10.01 shall be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof.

**10.02 City Resident Construction Worker Employment Requirement.** The Developer agrees for itself and its successors and assigns, and shall contractually obligate its General Contractor

and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the Developer, its General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

The Developer may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

**“Actual residents of the City”** shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Developer, the General Contractor and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DPD in triplicate, which shall identify clearly 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 Employer hired the employee should be written in after the employee's name.

The Developer, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The Developer, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of DPD, affidavits and other supporting documentation will be required of the Developer, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Developer, the General Contractor and each subcontractor 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.

When work at the Project is completed, in the event that the City has determined that the Developer has failed to ensure the fulfillment of the requirement of this Section concerning the 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 non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Developer to the City in payment for each percentage of shortfall 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 in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer, the General Contractor and/or the subcontractors to prosecution. **Any retainage to cover contract performance that may become due to the Developer 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 as to whether the Developer must surrender damages as provided in this paragraph.**

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 Agreement or related documents.

The Developer shall cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Project.

**10.03. MBE/WBE Commitment.** The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that during the Project:

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following percentages of the MBE/WBE Budget (as set forth in Exhibit H-2 hereto) shall be expended for contract participation by MBEs and by WBEs:

- (1) At least 24 percent by MBEs.
- (2) At least 4 percent by WBEs.

(b) For purposes of this Section 10.03 only, the Developer (and any party to whom a contract is let by the Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 10.03. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

(d) The Developer shall deliver monthly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, *inter alia*, the name and business address of each MBE and WBE solicited by the Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on five Business Days' notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.



(f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 10.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) Prior to the commencement of the Project, the Developer shall be required to meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this Section 10.03. The General Contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Developer shall submit the documentation required by this Section 10.03 to the City's monitoring staff, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (viii) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer is not complying with its obligations under this Section 10.03, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to the Developer to halt the Project or (2) seek any other remedies against the Developer available at law or in equity.

## SECTION 11. ENVIRONMENTAL MATTERS

The Developer hereby represents and warrants to the City that the Developer has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto, the Bond Ordinance and the Redevelopment Plan.

Without limiting any other provisions hereof, the Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Developer: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Developer, or any person directly or indirectly controlling, controlled by or under common control with the Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Developer), or (ii) any liens against the Property permitted or imposed by

any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

## SECTION 12. INSURANCE

The Developer shall provide and maintain, or cause to be provided, at the Developer's own expense, during the Term of the Agreement (or as otherwise specified below), the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

(a) Prior to Execution and Delivery of this Agreement and Throughout the Term of the Agreement

(i) Workers Compensation and Employers Liability Insurance

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

(ii) Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. coverages shall include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(b) Construction

(i) Workers Compensation and Employers Liability Insurance

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

(ii) Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 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 is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability Insurance (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 \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory bases.

(iv) Railroad Protective Liability Insurance

When any work is to be done adjacent to or on railroad or transit property, Contractor shall provide, or cause to be provided with respect to the operations that the Contractor performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy has limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) Builders Risk Insurance

When the Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable. The City of Chicago shall be named as an additional insured and loss payee.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000. Coverage shall include contractual liability. When policies are renewed or replaced, the policy retroactive date

must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

When any remediation work is performed which may cause a pollution exposure, contractor's Pollution Liability shall be provided with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. When policies are renewed, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of one (1) year. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(c) Term of the Agreement

- (i) Prior to the execution and delivery of this Agreement and during construction of the Project, All Risk Property Insurance in the amount of the full replacement value of the Property. The City of Chicago is to be named an additional insured on a primary, non-contributory basis.
- (ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Property. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable. The City of Chicago is to be named an additional insured on a primary, non-contributory basis.

(d) Other Requirements

The Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring

during the term of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from the Developer shall not be deemed to be a waiver by the City. The Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this Agreement until proper evidence of insurance is provided.

The insurance shall provide for 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 Developer.

The Developer agrees that insurers shall waive rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

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

The Developer expressly understands and agrees that the Developer's insurance is primary and any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Developer under the Agreement.

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 Developer shall require the General Contractor, and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the General Contractor, or subcontractors. All General Contractors and subcontractors shall be subject to the same requirements (Section (d)) of Developer unless otherwise specified herein.

If the Developer, General Contractor or any subcontractor desires additional coverages, the Developer, General Contractor and any 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, so long as any such change does not increase these requirements.

## SECTION 13. INDEMNIFICATION

**13.01 General Indemnity.** Developer agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnitees") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnities shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner relating or arising out of:

(i) the Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(ii) the Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or information statement or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by the Developer or any Affiliate Developer or any agents, employees, contractors or persons acting under the control or at the request of the Developer or any Affiliate of Developer; or

(iv) the Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto;

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this **Section 13.01** shall survive the termination of this Agreement.

## SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

**14.01 Books and Records.** The Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the

Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense. The Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer with respect to the Project.

**14.02 Inspection Rights.** Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

## SECTION 15. DEFAULT AND REMEDIES

**15.01 Events of Default.** The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by the Developer hereunder:

(a) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under this Agreement or any related agreement;

(b) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity if such failure may have a material adverse effect on the Developer's business, property, assets, operations or condition, financial or otherwise;

(c) the making or furnishing by the Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer; provided, however, that if such commencement

of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

(g) the entry of any judgment or order against the Developer which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under the Lender Financing, which default is not cured within any applicable cure period;

(i) the dissolution of the Developer or the death of any natural person who owns a material interest in the Developer; or

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor); or

(k) after 10 years from the time of the issuance of the Certificate, the sale or transfer of all of the ownership interests of the Developer or change in use of the Property from a community theater without the prior written consent of the City; or

(l) failure to submit documentation requested by DPD's monitoring staff in a reasonably timely manner.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, and may require the Developer to repay any City Funds that it has received. Notwithstanding anything herein to the contrary, subsequent to a Qualified Transfer of the City Note, the City will, notwithstanding any such Event of Default, continue to make payments with respect to the City Note. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein.

**15.03 Curative Period.** In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have



occurred unless the Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

## SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on Exhibit G hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "Existing Mortgages." Any mortgage or deed of trust that the Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that the Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City (subject to Section 4.03(v)) is referred to herein as a "Permitted Mortgage." It is hereby agreed by and between the City and the Developer as follows:

(a) In the event that a mortgagee or any other party shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "the Developer" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer's interest under this Agreement, such party has no liability

under this Agreement for any Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, in which case the Developer shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land. After issuance of the Certificate, if any mortgagee or other permitted transferee accepts assignment of this Agreement, consent by the City is not required. However, consent by the City is required if the City has an obligation to pay any incremental taxes to the transferee.

(c) No New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD.

#### SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified mail, return receipt requested.

If to the City:	City of Chicago Department of Planning and Development 121 North LaSalle Street, Room 1000 Chicago, IL 60602 Attention: Commissioner
With Copies To:	City of Chicago Department of Law Finance and Economic Development Division 121 North LaSalle Street, Room 600 Chicago, IL 60602
If to the Developer:	The Black Ensemble Theater Corporation 4520 N. Beacon Chicago, Illinois 60640 Attn: Executive Director, Jackie Taylor
With Copies To:	Neal & Leroy, LLC 203 N. LaSalle Suite 2300 Chicago, Illinois 60601-1243 Attn: Renee F. Kessel

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause(c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

## SECTION 18. MISCELLANEOUS

**18.01 Amendment.** This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement Exhibit D hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in Sections 10.02 and 10.03 hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer by more than ninety (90) days.

**18.02 Entire Agreement.** This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

**18.03 Limitation of Liability.** No member, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer from the City or any successor in interest or on any obligation under the terms of this Agreement.

**18.04 Further Assurances.** The Developer agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

**18.05 Waiver.** Waiver by the City or the Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing

between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

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

18.07 **Disclaimer**. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

18.08 **Headings**. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

18.09 **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

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

18.11 **Conflict**. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinance(s) shall prevail and control.

18.12 **Governing Law**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

18.13 **Form of Documents**. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

18.14 **Approval**. Wherever this Agreement provides for the approval or consent of the City, DPD or the Commissioner, or any matter is to be to the City's, DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, DPD or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or DPD in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

13.15 **Assignment**. The Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by

all remaining executory terms of this Agreement, including but not limited to Section 8.21 (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

**18.16 Binding Effect.** This Agreement shall be binding upon the Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

**18.17 Force Majeure.** Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

**18.18 Exhibits.** All of the exhibits attached hereto are incorporated herein by reference.

**18.19 Business Economic Support Act.** Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

**18.20 Venue and Consent to Jurisdiction.** If there is a lawsuit under this Agreement, each party may hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

**18.21 Costs and Expenses.** In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement.

This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgement collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

**18.22 Business Relationships.** The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer 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 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) 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. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed on or as of the day and year first above written.

THE BLACK ENSEMBLE THEATER CORPORATION

By: 

Jackie Taylor  
Its: Executive Director

CITY OF CHICAGO

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

Commissioner, Department of Planning and Development

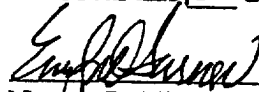




STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Evelyn D. Turner, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jackie Taylor, personally known to me to be the Executive Director of Black Ensemble Theater Corporation, an Illinois not-for-profit corporation (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered said instrument, pursuant to the authority given to her by the Board of Directors of the Developer, as her free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 10<sup>th</sup> day of February, 2006.

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

My Commission Expires \_\_\_\_\_



(SEAL)



## EXHIBIT A

### REDEVELOPMENT AREA

#### Legal Description

THAT PART OF SECTIONS 8 AND 17, BOTH IN TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF ASHLAND AVENUE WITH THE SOUTH RIGHT-OF-WAY LINE OF FOSTER AVENUE; THENCE EAST ALONG SAID SOUTH LINE OF FOSTER AVENUE, TO THE INTERSECTION WITH WEST LINE OF LOT 16 IN BROWN'S 2ND ADDITION TO ARGYLE, SAID WEST LINE ALSO BEING THE EAST LINE OF A NORTH-SOUTH ALLEY IN SAID BROWN'S 2ND ADDITION TO ARGYLE, LYING EAST OF CLARK STREET; THENCE SOUTH ALONG SAID EAST LINE OF THE NORTH-SOUTH ALLEY, TO THE NORTH RIGHT-OF-WAY LINE OF WINONA AVENUE; THENCE SOUTHERLY TO THE EASTERLY LINE OF A NORTH-SOUTH ALLEY IN THE SUBDIVISION OF LOT 44 IN SAID BROWN'S 2ND ADDITION AND BLOCK 6 IN CHYTRAU'S ADDITION TO ARGYLE, LYING EAST OF CLARK STREET; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF A NORTH-SOUTH ALLEY TO THE INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF CARMEN AVENUE; THENCE SOUTHERLY TO THE NORTHWEST CORNER OF LOT 40 IN SAID SUBDIVISION OF LOT 44 IN BROWN'S 2ND ADDITION TO ARGYLE AND BLOCK 6 IN CHYTRAU'S ADDITION TO ARGYLE; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 40, ALSO BEING AN EASTERLY LINE OF A NORTH-SOUTH ALLEY, LYING EAST OF CLARK STREET AND ITS SOUTHERLY EXTENSION, TO THE SOUTH LINE OF AN EAST-WEST ALLEY IN SAID SUBDIVISION; THENCE EAST ALONG SAID SOUTH LINE OF AN EAST-WEST ALLEY, TO THE NORTHWEST CORNER OF LOT 9 IN SUBDIVISION OF LOTS 2 AND 3 IN BLOCK 3 TO ANDERSONVILLE; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 9 TO THE NORTH LINE OF WINNEMAC AVENUE; THENCE EAST ALONG SAID NORTH LINE OF WINNEMAC AVENUE, TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 2 IN R. W. MATTESON'S RESUBDIVISION OF THE NORTH HALF OF LOT 21 IN A. J. BROWN'S SUBDIVISION AND ALSO LOTS 16, 17 AND THE WEST HALF OF LOT 18 IN W. M. LEMOYNE'S SUBDIVISION; THENCE SOUTH ALONG SAID NORTHERLY EXTENSION AND THE WEST LINE OF SAID LOT 2 TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE EAST TO THE NORTHWEST CORNER OF LOT 4 OF C. J. DRIEVER'S SUBDIVISION OF LOT 20 (EXCEPT THE EAST 3 FEET THEREOF) AND THE WEST 197 FEET OF THE EAST 200 FEET OF THE SOUTH HALF OF LOT 21 IN SAID A. J. BROWN'S SUBDIVISION; THENCE SOUTH, ALONG A WEST LINE OF SAID LOT 4 TO THE INTERSECTION WITH THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 5 IN SAID C. J. DRIEVER'S SUBDIVISION; THENCE WEST ALONG SAID EASTERLY EXTENSION AND SAID NORTH LINE OF LOT 5 TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTH, ALONG SAID WEST LINE OF LOT 5 TO THE NORTH RIGHT-OF-WAY LINE OF ARGYLE STREET; THENCE EAST ALONG SAID NORTH LINE OF ARGYLE STREET, TO THE NORTHERLY EXTENSION OF THE EASTERLY LINE OF A NORTH-SOUTH ALLEY IN COLLOT'S ARGYLE SUBDIVISION, LYING EAST OF CLARK STREET; THENCE SOUTH ALONG SAID NORTHERLY EXTENSION AND SAID EASTERLY LINE OF A NORTH-SOUTH ALLEY, TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 8 IN SAID COLLOT'S ARGYLE SUBDIVISION; THENCE EAST ALONG SAID EASTERLY EXTENSION AND SAID LOT 8, TO THE EASTERLY RIGHT-OF-WAY LINE OF CLARK STREET; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF CLARK STREET, TO THE NORTH RIGHT-OF-WAY LINE OF LAWRENCE AVENUE; THENCE EAST ALONG SAID NORTH LINE OF LAWRENCE AVENUE TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF LOT

287 IN SHERIDAN DRIVE SUBDIVISION IN THE NORTHWEST QUARTER OF SAID SECTION 17, SAID WESTERLY LINE OF LOT 287 ALSO BEING THE EASTERLY LINE OF A NORTHERLY-SOUTHERLY ALLEY EASTERLY OF SAID CLARK STREET; THENCE SOUTHERLY ALONG SAID NORTHERLY EXTENSION AND WESTERLY LINE ALSO BEING THE EASTERLY LINE OF A NORTHERLY-SOUTHERLY ALLEY EAST OF CLARK STREET TO THE NORTH RIGHT-OF-WAY LINE OF SUNNYSIDE AVENUE; THENCE EAST, ALONG SAID NORTH LINE OF SAID SUNNYSIDE AVENUE TO THE EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 17; THENCE SOUTHERLY, ALONG SAID EAST LINE OF THE WEST HALF, TO THE INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID SUNNYSIDE AVENUE; THENCE WEST, ALONG SAID SOUTH LINE OF SUNNYSIDE AVENUE TO THE NORTHWEST CORNER OF LOT 48 IN SUNNYSIDE ADDITION TO SHERIDAN PARK; THENCE SOUTHERLY ALONG THE WESTERLY LINES OF LOTS 48 THRU 40 (INCLUSIVE) IN SAID SUNNYSIDE ADDITION TO SHERIDAN PARK, LOTS 10, 9 AND 8 IN AJ. PRUITT'S RESUBDIVISION OF LOTS 36 TO 39 AND 52 TO 59 IN SUNNYSIDE ADDITION, LOTS 35 THRU 30 (INCLUSIVE) IN AJ. PRUITT'S RESUBDIVISION OF LOTS 1, 2 AND 3 IN SUNNYSIDE ADDITION AND THE WESTERLY LINES OF LOTS 1, 2 AND 3 IN A RESUBDIVISION OF LOTS 25 TO 29 IN SUNNYSIDE ADDITION TO SHERIDAN PARK, TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE EAST, ALONG THE SOUTH LINE OF SAID LOT 3, TO THE WEST RIGHT-OF-WAY LINE OF DOVER STREET; THENCE NORTH ALONG SAID WEST LINE OF DOVER STREET, TO THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 1 IN SAID AJ. PRUITT'S RESUBDIVISION OF LOTS 36 TO 39 AND 52 THRU 59 IN SUNNYSIDE ADDITION; THENCE EASTERLY, ALONG SAID WESTERLY EXTENSION AND THE NORTH LINE OF SAID LOT 1 TO THE WEST LINE OF LOT 74 IN THE SUBDIVISION OF THE SOUTH QUARTER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 17 (EXCEPT THE EAST 569.25 FEET THEREOF); THENCE SOUTH ALONG SAID WEST LINE OF LOT 74 AND THE WEST LINE OF LOTS 75 AND 76 IN SAID SUBDIVISION TO THE SOUTH LINE OF SAID LOT 76; THENCE EAST, ALONG SAID SOUTH LINE OF LOT 76, TO THE EAST RIGHT-OF-WAY LINE OF BEACON STREET; THENCE SOUTH ALONG SAID EAST LINE OF BEACON STREET TO THE NORTH RIGHT-OF-WAY LINE OF MONTROSE AVENUE; THENCE WEST ALONG SAID NORTH LINE OF MONTROSE AVENUE TO THE EAST LINE OF LOT 13 IN BLOCK 23 OF RAVENSWOOD SUBDIVISION, SAID EAST LINE ALSO BEING THE WEST LINE OF A NORTH-SOUTH ALLEY IN SAID BLOCK 23, LYING WEST OF CLARK STREET; THENCE NORTH, ALONG SAID WEST LINE OF THE NORTH-SOUTH ALLEY, TO THE SOUTH RIGHT-OF-WAY LINE OF WILSON AVENUE; THENCE WEST ALONG SAID SOUTH LINE OF WILSON AVENUE TO THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 8 IN THE SUBDIVISION OF LOT 3 IN SIMON'S SUBDIVISION; THENCE NORTH ALONG SAID SOUTHERLY EXTENSION AND THE WEST LINE OF SAID LOT 8 AND ITS NORTHERLY EXTENSION, TO THE SOUTH LINE OF LOT 3 IN SIMON'S SUBDIVISION OF LOT 2 IN SIMON'S SUBDIVISION; THENCE EAST ALONG SAID SOUTH LINE OF LOT 3 TO THE SOUTHEAST CORNER THEREOF; THENCE NORTH ALONG THE EAST LINES OF SAID LOT 3 AND LOTS 2 AND 1 IN SAID SIMON'S SUBDIVISION OF LOT 2 IN SIMON'S SUBDIVISION, TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE WEST, ALONG THE NORTH LINE OF SAID LOT 1 TO THE EAST LINE OF LOT 7 IN BLOCK 2 OF J.L. STARK'S ADDITION TO RAVENSWOOD; THENCE NORTH ALONG SAID EAST LINE OF LOT 7 TOGETHER WITH THE EAST LINES OF LOTS 8, 9 AND 10 IN SAID J.L. STARK'S ADDITION TO RAVENSWOOD TO THE NORTHEAST CORNER OF SAID LOT 10; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 10 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH ALONG THE EAST OF LOTS 2 AND 1 IN SAID J.L. STARK'S ADDITION TO RAVENSWOOD TO THE SOUTH RIGHT-OF-WAY LINE OF LELAND AVENUE; THENCE WEST ALONG SAID SOUTH LINE OF LELAND AVENUE TO THE EAST RIGHT-OF-WAY LINE OF ASHLAND AVENUE; THENCE NORTH ALONG SAID EAST LINE OF ASHLAND AVENUE TO THE NORTH RIGHT-OF-WAY LINE OF LAWRENCE AVENUE;

THENCE EAST ALONG THE NORTH LINE OF LAWRENCE AVENUE TO THE EAST LINE OF LOT 7 IN BUSCHOR'S SUBDIVISION OF LOTS 9 AND 10 IN BLOCK 1 IN KEENEY'S ADDITION TO RAVENSWOOD, SAID LINE ALSO BEING A WEST LINE OF A NORTH-SOUTH ALLEY WEST OF CLARK STREET; THENCE NORTH ALONG SAID WEST LINE OF THE NORTH-SOUTH ALLEY TO THE SOUTH LINE OF A SUBDIVISION OF LOT 1 IN BLOCK 4 IN ANDERSONVILLE; THENCE WEST, ALONG SAID SOUTH LINE TO THE EAST LINE OF LOT 4 IN SAID SUBDIVISION; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 4, TO THE SOUTH LINE OF LOT 5 IN SAID SUBDIVISION; THENCE EAST, ALONG THE SOUTH LINE OF SAID LOT 5 AND ITS EASTERLY EXTENSION TO THE EAST LINE OF THE WEST HALF OF A NORTH-SOUTH ALLEY IN SAID SUBDIVISION; THENCE NORTH ALONG SAID EAST LINE OF THE WEST HALF OF A NORTH-SOUTH ALLEY IN SAID SUBDIVISION AND ITS NORTHERLY EXTENSION, TO THE NORTH RIGHT-OF-WAY LINE OF WINNEMAC AVENUE; THENCE EAST ALONG SAID NORTH LINE OF WINNEMAC AVENUE, TO THE EAST LINE OF LOT 8 IN THE SUBDIVISION OF LOTS 2 AND 3 IN BLOCK 3 IN ANDERSONVILLE, SAID LINE ALSO BEING A WEST LINE OF A NORTH-SOUTH ALLEY, WEST OF CLARK STREET; THENCE NORTHERLY, ALONG SAID WEST LINE OF A NORTH-SOUTH ALLEY TO A LINE THAT IS 16 FEET SOUTH OF AND PARALLEL TO THE SOUTH LINE OF LACHALLE'S SUBDIVISION OF LOT 1 IN BLOCK 3 IN ANDERSONVILLE; THENCE WEST ALONG SAID 16 FOOT PARALLEL LINE SOUTH OF LACHALLE'S SUBDIVISION TO THE EAST LINE OF LOT 16 IN SAID SUBDIVISION OF LOTS 2 AND 3 IN BLOCK 3 IN ANDERSONVILLE; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 16 TO SAID SOUTH LINE OF LACHALLE'S SUBDIVISION; THENCE EAST ALONG SAID SOUTH LINE TO THE WEST LINE OF LOT 4 IN SAID LACHALLE'S SUBDIVISION; THENCE NORTH ALONG SAID WEST LINE OF LOT 4 TO THE SOUTH RIGHT-OF-WAY LINE OF CARMEN AVENUE; THENCE NORTH TO THE WEST LINE OF A NORTH-SOUTH ALLEY LYING WEST OF CLARK STREET; THENCE NORTH ALONG SAID WEST LINE OF A NORTH-SOUTH ALLEY TO THE SOUTH RIGHT-OF-WAY LINE OF WINONA AVENUE; THENCE NORTHERLY TO THE EAST LINE OF LOT 3 IN A SUBDIVISION OF LOT 5 IN BUCKNER'S SUBDIVISION TOGETHER WITH THE WEST 125 FEET OF LOT 3 IN BLOCK 1 IN ANDERSONVILLE: THENCE NORTH, ALONG SAID EAST LINE AND ALONG THE EAST LINE OF LOTS 2 AND 1 IN SAID SUBDIVISION TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE NORTH, ALONG A WEST LINE OF A NORTH-SOUTH ALLEY IN BUCKNER'S SUBDIVISION OF LOT 2 IN BLOCK 1 IN ANDERSONVILLE, WEST OF CLARK STREET, TO THE NORTH LINE OF SAID BUCKNER'S SUBDIVISION OF LOT 2 IN BLOCK 1 IN ANDERSONVILLE; THENCE WEST ALONG SAID NORTH LINE, TO THE EAST RIGHT-OF-WAY LINE OF ASHLAND AVENUE; THENCE NORTH, ALONG SAID EAST LINE, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**EXHIBIT B**

**PROPERTY**

PINS: 14-17-120-018-0000  
14-17-120-019-0000

Property Address: 4440 - 4450 N. Clark St., Chicago, Illinois

LOTS 1, 2, 3 AND 4 IN BLOCK 23 IN RAVENSWOOD, BEING A SUBDIVISION OF THE SOUTH HALF OF THE SOUTH WEST QUARTER OF THE NORTH WEST QUARTER OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

**EXHIBIT C**

**TIF-FUNDED IMPROVEMENTS**

(See Attached)

**EXHIBIT C**  
**BUDGET / TIF ELIGIBLE COSTS**  
**Black Ensemble Theater Relocation**  
**4440 North Clark Street**  
**Chicago, IL**

USES OF FUNDS	TIF Eligible Costs		
	Total Cost	Percent	Amount
<b>LAND</b>			
Acquisition	\$3,600,000	100.0%	\$3,600,000
Land Write-Down			\$0
Land Carry Cost	\$255,000	100.0%	\$255,000
<b>TOTAL</b>	<b>\$3,855,000</b>		<b>\$3,855,000</b>

<b>SITE PREPARATION COSTS</b>			
Demolition	\$10,000	100.0%	\$10,000
Environmental Remediation	\$70,000	100.0%	\$70,000
Landscaping	\$40,000	100.0%	\$40,000
Infrastructure/Site Work/Utilities	\$20,000	100.0%	\$20,000
Other	\$0	100.0%	\$0
Contingency	\$5,000	100.0%	\$5,000
<b>Sub-Total On-Site Costs</b>	<b>\$145,000</b>		<b>\$145,000</b>

<b>HARD CONSTRUCTION COSTS</b>			
Shell & Core, Finishes (exterior/interior)	\$4,000,000	100.0%	\$4,000,000
FF&E	\$2,000,000	100.0%	\$2,000,000
Contingency	\$600,000	100.0%	\$600,000
<b>Sub-Total On-Site</b>	<b>\$6,600,000</b>		<b>\$6,600,000</b>

<b>TOTAL SITE AND HARD COSTS</b>	<b>\$6,745,000</b>	<b>100.0%</b>	<b>\$6,745,000</b>
----------------------------------	--------------------	---------------	--------------------

<b>SOFT COSTS:</b>			
Architectural & Plans	\$450,000	100.0%	\$450,000
Civil, Engineering & Plans	\$20,000	100.0%	\$20,000
General Conditions	\$240,000	100.0%	\$240,000
General legal, Title, accounting, and TIF	\$60,000	100.0%	\$60,000
Contractor Fee (included in hard costs)	\$180,000	100.0%	\$180,000
Construction Admin / Mgt.	\$180,000	100.0%	\$180,000
Env./ Material Testing/Geo/Eng Evaluations	\$15,000	100.0%	\$15,000
Appraisal	\$65,000	100.0%	\$65,000
Surveys	\$10,000	100.0%	\$10,000
Permits & City Inspection Fees/Legal	\$5,000	100.0%	\$5,000
Redevelopment Consultant	\$40,000	0.0%	\$0
Compliance Monitoring	\$10,000	100.0%	\$10,000
Marketing	\$25,000	0.0%	\$0
Legal, title & closing costs	\$20,000	100.0%	\$20,000
Builder's/Liab./Bus. Risk and W.C. Ins.	\$25,000	100.0%	\$25,000
Interim Real Estate Taxes during const.	\$7,000	0.0%	\$0
Development Management Fee	\$80,970	100.0%	\$80,970
Soft Cost Contingency)	\$125,000	95.7%	\$119,636
<b>Sub-Total Soft Costs</b>	<b>\$1,557,970</b>		<b>\$1,420,606</b>

<b>Finance and Interest Expense</b>			
Financing Costs	\$245,000	100.0%	\$245,000
Estimated Construction Interest Expense			\$0
Operating Losses			\$0
<b>Sub-Total Finance and Interest Expense</b>	<b>\$245,000</b>		<b>\$245,000</b>

<b>TOTAL COSTS</b>	<b>\$12,402,970</b>		<b>\$12,402,970</b>
--------------------	---------------------	--	---------------------



## EXHIBIT G

### PERMITTED LIENS

1. Liens or encumbrances against the Property:

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2: Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any: ~~[To be completed by Developer's counsel, subject to City approval.]~~

NONE

2/22/08

**EXHIBIT H**  
**PROJECT BUDGET**  
**(See Attached)**

**BLACK ENSEMBLE THEATER  
TOTAL PROJECT BUDGET**

**Sources**

TIF Backed Loans	\$6,000,000
Fundraising, Marketing	\$7,557,213
<b>TOTAL SOURCES</b>	<b>\$13,557,213</b>

**Uses**

Acquisition (\$125/square foot of land)	\$3,600,000
-Land Carry	\$250,000
<b>Subtotal Acquisition</b>	<b>\$3,850,000</b>
<b>Site Preparation</b>	
-Demolition	\$10,000
-Environmental Remediation	\$70,000
-Landscaping	\$50,000
-Infrastructure/Site Work/Utilities	\$20,000
-Contingency	\$5,000
<b>Subtotal Site Prep</b>	<b>\$155,000</b>
<b>Hard Construction Costs</b>	
Shell & Core, Finishes (exterior/interior)	\$4,500,000
FF&E	\$2,500,000
Contingency	\$700,000
<b>Subtotal Hard Construction Costs</b>	<b>\$7,700,000</b>
<b>TOTAL SITE AND HARD COSTS</b>	<b>\$11,705,000</b>
<b>Soft Costs</b>	
Architectural Plans	\$450,000
Civil, Engineering & Plans	\$20,000
General Conditions	\$240,000
General legal, title, accounting and TIF	\$60,000
Contractor Fee	\$180,000
Construction Administration/Management	\$180,000
Environmental/Material Testing/Geo/Eng Evaluation	\$25,000
Appraisal	\$65,000
Survey	\$10,000
Permits & City Inspection/Legal Fees	\$5,000
Redevelopment Consultant	\$40,000
Compliance/Monitoring	\$10,000
Marketing	\$25,000
Legal, Title & Closing Costs	\$20,000
Builders Liability/Bus. Risk & WC Insurance	\$25,000
Interim Real Estate Taxes during construction	\$7,000
Development Management Fee	\$115,213
Soft Cost Contingency	\$125,000
<b>Subtotal-Soft Costs</b>	<b>\$1,602,213</b>
Financing Costs	\$250,000
<b>TOTAL SOFT COSTS</b>	<b>\$1,852,213</b>
<b>TOTAL USES</b>	<b>\$13,557,213</b>

**EXHIBIT H-2**

**MBE/WBE BUDGET**

**(See Attached)**

**MBE / WBE REQUIREMENTS**  
**Black Ensemble Theater Relocation**  
**4440 N. Clark Street**  
**Chicago, Illinois**

**USES OF FUNDS**

**LAND**

	Total Cost
Acquisition	\$3,600,000
Land Write-Down	
Land Carry Cost	\$255,000
<b>TOTAL</b>	<b>\$3,855,000</b>

Costs Subject to MBE/WBE Requirements			
Percent	Amount	MBE 24%	WBE 4%
0.0%	\$0	\$0	\$0
		\$0	\$0
0.0%	\$0	\$0	\$0
		\$0	\$0
	\$0	\$0	\$0

**SITE PREPARATION COSTS**

Demolition	\$10,000
Environmental Remediation	\$70,000
Landscaping	\$50,000
Infrastructure/Site Work/Utilities	\$20,000
Other	\$0
Contingency	\$5,000
<b>Sub-Total On-Site Costs</b>	<b>\$155,000</b>

100.0%	\$10,000	\$2,400	\$400
100.0%	\$70,000	\$16,800	\$2,800
100.0%	\$50,000	\$12,000	\$2,000
100.0%	\$20,000	\$4,800	\$800
0.0%	\$0	\$0	\$0
0.0%	\$0	\$0	\$0
	\$150,000	\$36,000	\$6,000

**HARD CONSTRUCTION COSTS**

Shell & Core, Finishes (exterior/interior)	\$4,500,000
FF&E	\$2,500,000
Contingency	\$700,000
<b>Sub-Total On-Site</b>	<b>\$7,700,000</b>

100.0%	\$4,500,000	\$1,080,000	\$180,000
100.0%	\$2,500,000	\$600,000	\$100,000
0.0%	\$0	\$0	\$0
	\$7,000,000	\$1,680,000	\$280,000

**TOTAL SITE AND HARD COSTS**

**\$7,855,000**

**91.0% \$7,150,000 \$1,716,000 \$286,000**

**SOFT COSTS:**

Architectural & Plans	\$450,000
Civil, Engineering & Plans	\$20,000
General Conditions	\$240,000
General legal, Title, and accounting	\$60,000
Contractor Fee (Included in hard costs)	\$180,000
Construction Admin / Mgt.	\$180,000
Env./ Material Testing/Geo/Eng Evaluations	\$25,000
Appraisal	\$65,000
Surveys	\$10,000
Permits & City Inspection Fees/Legal	\$5,000
Redevelopment Consultant	\$40,000
Compliance Monitoring	\$10,000
Marketing	\$25,000
Legal, title & closing costs	\$20,000
Builder's/Liab./Bus. Risk and W.C. Ins.	\$25,000
Interim Real Estate Taxes during const.	\$7,000
Project Management 125%	\$115,213
Soft Cost Contingency	\$125,000
<b>Sub-Total Soft Costs</b>	<b>\$1,502,213</b>

100.0%	\$450,000	\$108,000	\$18,000
100.0%	\$20,000	\$4,800	\$800
100.0%	\$240,000	\$57,600	\$9,600
100.0%	\$60,000	\$14,400	\$2,400
100.0%	\$180,000	\$43,200	\$7,200
100.0%	\$180,000	\$43,200	\$7,200
100.0%	\$25,000	\$6,000	\$1,000
100.0%	\$65,000	\$15,600	\$2,600
100.0%	\$10,000	\$2,400	\$400
0.0%	\$0	\$0	\$0
0.0%	\$0	\$0	\$0
100.0%	\$10,000	\$2,400	\$400
0.0%	\$0	\$0	\$0
100.0%	\$20,000	\$4,800	\$800
0.0%	\$0	\$0	\$0
0.0%	\$0	\$0	\$0
100.0%	\$115,213	\$27,651	\$4,609
0.0%	\$0	\$0	\$0
	\$1,375,213	\$330,051	\$55,009

**Finance and Interest Expense**

Financing Costs and Interest Expense	\$245,000
Operating Losses	
<b>Sub-Total Finance and Interest Expense</b>	<b>\$245,000</b>

0.0%	\$0	\$0	\$0
	\$0	\$0	\$0
	\$0	\$0	\$0

**TOTAL COSTS**

**\$13,557,213**

**\$8,525,213 \$2,046,051 \$341,009**

**EXHIBIT K**

**PRELIMINARY TIF PROJECTION-REAL ESTATE TAXES**

**EXHIBIT K  
INCREMENTAL PROPERTY TAX REVENUE BEFORE AND AFTER SBIF DEBT  
BLACK ENSEMBLE THEATER  
CLARK/ MONTROSE TIF REDEVELOPMENT PROJECT AREA  
CHICAGO, ILLINOIS**

Assessment Year	Collection Year [1]	PAYMENT DATE	NOTE YEAR	Incremental Property Tax Revenue (IPT) [2]				SBIF Debt [3]	IPT After SBIF		
				A	B	C	D		IPT Available After SBIF		
									A	A + B	A + B + C
2004	2005										
2005	2006	Mar 1, 2007	1	\$794,585	\$169,561	\$67,017	\$1,031,163	\$91,758	\$702,827	\$872,388	\$939,405
2006	* 2007	Mar 1, 2008	2	\$920,157	\$270,080	\$67,196	\$1,257,433	\$84,700	\$835,457	\$1,105,537	\$1,172,733
2007	2008	Mar 1, 2009	3	\$905,434	\$265,759	\$461,403	\$1,632,596	\$84,700	\$820,734	\$1,086,493	\$1,547,896
2008	2009	Mar 1, 2010	4	\$890,947	\$261,507	\$644,536	\$1,796,990	\$84,700	\$806,247	\$1,067,754	\$1,712,290
2009	* 2010	Mar 1, 2011	5	\$1,018,576	\$282,307	\$921,534	\$2,222,417	\$155,000	\$863,576	\$1,145,883	\$2,067,417
2010	2011	Mar 1, 2012	6	\$1,002,278	\$277,790	\$906,789	\$2,186,858	\$155,000	\$847,278	\$1,125,069	\$2,031,858
2011	2012	Mar 1, 2013	7	\$986,242	\$273,345	\$892,281	\$2,151,868	\$155,000	\$831,242	\$1,104,587	\$1,996,868
2012	* 2013	Mar 1, 2014	8	\$1,116,038	\$294,606	\$954,639	\$2,365,283	\$155,000	\$961,038	\$1,255,644	\$2,210,283
2013	2014	Mar 1, 2015	9	\$1,098,181	\$289,893	\$939,364	\$2,327,438	\$155,000	\$943,181	\$1,233,074	\$2,172,438
2014	2015	Mar 1, 2016	10	\$1,080,610	\$285,254	\$924,335	\$2,290,199	\$155,000	\$925,610	\$1,210,865	\$2,135,199
2015	* 2016	Mar 1, 2017	11	\$1,212,684	\$306,992	\$988,174	\$2,507,850	\$155,000	\$1,057,684	\$1,364,676	\$2,352,850
2016	2017	Mar 1, 2018	12	\$1,193,281	\$302,080	\$972,363	\$2,467,725	\$155,000	\$1,038,281	\$1,340,361	\$2,312,725
2017	2018	Mar 1, 2019	13	\$1,174,189	\$297,247	\$956,805	\$2,428,241	\$155,000	\$1,019,189	\$1,316,436	\$2,273,241
2018	* 2019	Mar 1, 2020	14	\$1,308,652	\$319,477	\$1,022,171	\$2,650,301	\$155,000	\$1,153,652	\$1,473,129	\$2,495,301
2019	2020	Mar 1, 2021	15	\$1,287,714	\$314,365	\$1,005,817	\$2,607,896	\$103,380	\$1,184,334	\$1,498,699	\$2,504,515
2020	2021	Mar 1, 2022	16	\$1,267,110	\$309,335	\$989,724	\$2,566,169	\$0	\$1,267,110	\$1,576,446	\$2,566,169
2021	* 2022	Mar 1, 2023	17	\$1,404,075	\$332,074	\$1,056,662	\$2,792,812	\$0	\$1,404,075	\$1,736,150	\$2,792,812
2022	2023	Dec 31, 2023	18	\$1,381,610	\$326,761	\$1,039,756	\$2,748,127	\$0	\$1,381,610	\$1,708,371	\$2,748,127
				\$20,042,365	\$5,178,435	\$14,810,566	\$40,031,365	\$1,999,239	\$18,043,126	\$23,221,561	\$38,032,127

\* Indicates a reassessment year

- The Clark Montrose TIF was adopted July 7, 1999, and is estimated to be dissolved in 2022, with the last IPT collection on December 31, 2023.
- Incremental Property Tax Revenue (IPT)
  - Means IPT estimated to be generated by currently existing improvements, and the land upon which existing improvements are located. This category excludes IPT generated by land and improvements included in B and C.
  - Means IPT estimated to be generated by improvements recently constructed, and the land upon which those improvements are located.
  - Means IPT estimated to be generated by improvements currently being developed or constructed, and the land upon which those improvements are located.
  - Means Total IPT estimated to be generated by "A", "B", and "C".
- Outstanding SBIF debt in the amount of \$1,100,000 is paid off by Harris Bank by NOTE A (the "SBIF NOTE"), which would have priority lien on TIF revenue. This is an approximate pay-off amount for January 2006.

INCREMENTAL TAXES, AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCES. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OR INTEREST OF THIS NOTE. The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

This Note is issued in fully registered form in the denomination of its outstanding principal amount. This Note may not be exchanged for a like aggregate principal amount of notes or other denominations.

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of



business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

This Note hereby authorized shall be executed and delivered as the Ordinance and the Redevelopment Agreement provide.

Pursuant to the Redevelopment Agreement dated as of February 10, 2006 between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to acquire and construct the Project and to advance funds for the construction of certain facilities related to the Project on behalf of the City. The cost of such acquisition and construction in the aggregate principal amount not to exceed \$6,000,000 shall be deemed to be a disbursement of the proceeds of this Note.

Subsequent to a Qualified Transfer of this Note, pursuant to the Redevelopment Agreement, the City shall not suspend or terminate payments of principal and of interest on this Note, nor offset amounts owed to the City against the principal amount outstanding under this Note. The City shall be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. Such rights shall survive any transfer of this Note. The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes and neither the City nor the Registrar shall be affected by any notice to the contrary, unless transferred in accordance with the provisions hereof.

**EXHIBIT M**

**FORM OF NOTE**

<b>REGISTERED NO. R-1</b>	<b>MAXIMUM AMOUNT</b>	<b>\$6,000,000.00</b>
	<b>Release One:</b>	<b>up to \$4,500,000.00*</b>
	<b>Release Two:</b>	<b>up to \$1,500,000.00</b>
		<b>*(subject to Sec.4.03(b))</b>

**UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF COOK  
CITY OF CHICAGO  
TAX INCREMENT ALLOCATION REVENUE NOTE  
(CLARK/MONTROSE - BLACK ENSEMBLE THEATER)  
REDEVELOPMENT PROJECT, TAXABLE SERIES A**

**Registered Owner: Black Ensemble Theater Corporation**

**Interest Rate: 7.7% per annum**

**Maturity Date: December 31, 2022**

Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on February 8, 2006 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and conditions under which this Note is issued and secured. THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND IS PAYABLE SOLELY FROM AVAILABLE EXCESS

It is hereby certified and recited that all conditions, acts and things required by law to exist, to happen, or to be done or performed precedent to and in the issuance of this Note did exist, have happened, have been done and have been performed in regular and due form and time as required by law; that the issuance of this Note, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation applicable to the City.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the Deputy City Clerk of the City, all as of February \_\_\_\_\_, 2006.

Mayor

(SEAL)

Attest:

City Clerk

**CERTIFICATE  
OF  
AUTHENTICATION**

Registrar  
and Paying Agent  
Acting Comptroller of the  
City of Chicago,  
Cook County, Illinois

This Note is described in the  
within mentioned Ordinance and  
is the Tax Increment Allocation  
Revenue Note (Clark/Montrose-Black Ensemble Theater Project)  
Taxable Series A, of the City of  
Chicago, Cook County, Illinois.

Comptroller

Date:

**PRINCIPAL PAYMENT RECORD**

DATE OF PAYMENT

PRINCIPAL PAYMENT

PRINCIPAL BALANCE DUE

(ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto the within Note and does hereby irrevocably constitute and appoint attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: February 10, 2006

Registered Owner

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the Note in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

Notice: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

## EXHIBIT N

### PUBLIC BENEFITS PROGRAM

The Black Ensemble Theater has a significant education and community outreach program that focuses on those individuals and communities that face significant economic and social obstacles. These programs include:

**Community Access** program provides almost 3,000 free tickets a year to disenfranchised communities for the purpose of facilitating in the process of healing through theater. We serve more than 200 drug abuse, sexual abuse and community development organizations. Mothers Too Soon, Recovery Point, Woodlawn Organization for Substance Abuse Services and Sister House are just a few of the organizations that we currently serve.

On the completion of our new theater, we anticipate being able to increase our service to these communities by 50%, providing at least 6,000 free tickets to this vital and needy constituency.

**Strengthening the School through Theater Arts**, which annually serves 2,500 students, their parents and teachers in six inner-city schools, and assists in developing students' cognitive and social skills and assists teachers in utilizing theater skills in implementing their curriculum.

**New Directions**, which serves wards of the state, helps such individuals to prepare for academic and vocational advancement and transition to adulthood.

**Theater for Special Women**, serves mentally and physically challenged women participating in vocational training programs, helping to prepare them for a successful transition to the workforce.

All of these programs will be broadened and enhanced to accommodate 50% more individuals and organizations as our operation expands in the new theater space.

FOR CITY USE

AFFIDAVIT NO. \_\_\_\_\_

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT**

The City of Chicago (the "City") requires disclosure of the information requested in this Economic Disclosure Statement and Affidavit ("EDS") before any City agency, department or City Council action regarding the matter that is the subject of this EDS. Please fully complete each statement, with all information current as of the date this EDS is signed. If a question is not applicable, answer with "N.A." **An incomplete EDS will be returned and any City action will be interrupted.**

Please **print or type** all responses clearly and legibly. Add additional pages if needed, being careful to identify the portion of the EDS to which each additional page refers.

**WHO MUST SUBMIT AN EDS:**

1. **Applicants:** Any individual or entity (the "**Applicant**") making an application to the City for action requiring City Council or other City agency approval must file this EDS.
2. **Entities holding an interest in the Applicant:** Generally, whenever an ownership interest in the Applicant (for example, shares of stock of the Applicant or a limited partnership interest in the Applicant) is held or owned by a legal entity (for example, a corporation or partnership, rather than an individual) each such legal entity must also file an EDS on its own behalf, and any parent of that legal entity must do so until individual owners are disclosed. **However**, if an entity filing an EDS is a corporation whose shares are registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, only those shareholders that own 10% or more of that filing entity's stock must file EDSs on their own behalf.

**ACKNOWLEDGMENT OF POSSIBLE CREDIT AND OTHER CHECKS:** By completing and filing this EDS, the Undersigned acknowledges and agrees, on behalf of itself and the entities or individuals named in this EDS, that the City may investigate the creditworthiness of some or all of the entities or individuals named in this EDS.



**CERTIFYING THIS EDS:** Execute the certification on the date of the initial submission of this EDS. You may be asked to re-certify this EDS on the last page as of the date of submission of any related ordinance to the City Council, or as of the date of the closing of your transaction.

**PUBLIC DISCLOSURE:** It is the City's policy to make this document available to the public on its Internet site and/or upon request.

**GENERAL INFORMATION**

Date this EDS is completed: April 29, 2005

A. Who is submitting this EDS? That individual or entity will be the "Undersigned" throughout this EDS. Black Ensemble Theater

**NOTE:** The Undersigned is the individual or entity submitting this EDS, whether the Undersigned is an Applicant or is an entity holding an interest in the Applicant. This EDS requires certain disclosures and certifications from Applicants that are not required from entities holding an interest in the Applicant. When completing this EDS, please observe whether the section you are completing applies only to Applicants.

Check here if the Undersigned is filing this EDS as an Applicant.

Check here if the Undersigned is filing as an entity holding an interest in an Applicant.

Also, please identify the Applicant in which this entity holds an interest:

B. Business address of the Undersigned: 4250 N. Beacon St.  
Chicago, IL 60640

C. Telephone: (773) 769-4551 Fax: (773) 769-4533 Email: www.blackensembletheater.org

D. Name of contact person: Jackie Taylor

E. Tax identification number (optional): 36-2852762

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location if applicable):

TIF funding assistance for acquisition of property and construction of new theater facility

G. Is the Matter a procurement?  Yes  No

H. If a procurement, Specification # na and Contract # na

I. If not a procurement

1. City Agency requesting EDS: DPD

2. City action requested (e.g. loan, grant, sale of property):  
TIF assistance

3. If property involved, list property location:  
4440-50 W. Clark St., Chicago

**SECTION ONE: DISCLOSURE OF OWNERSHIP INTERESTS**

**A. NATURE OF ENTITY**

1. Indicate whether the Undersigned is an individual or legal entity:

- |   |   |
|---|---|
| <input type="checkbox"/> Individual           | <input type="checkbox"/> Limited Liability Company  |
| <input type="checkbox"/> Business corporation | <input type="checkbox"/> Joint venture  |
| <input type="checkbox"/> Sole proprietorship  | <input checked="" type="checkbox"/> Not-for-profit corporation<br>(Is the not-for-profit corporation also a 501(c)(3))? |
|   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |
| <input type="checkbox"/> General partnership  | <input type="checkbox"/> Other entity (please specify)  |
| <input type="checkbox"/> Limited partnership  | _____   |

2. State of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Is the organization authorized to do business in the State of Illinois as a foreign entity?

- Yes  No  N/A

**B. ORGANIZATION INFORMATION**

**1. IF THE UNDERSIGNED IS A CORPORATION:**

a. List below the names and titles of all executive officers and all directors of the corporation. For not-for-profit corporations, also list below any executive director of the corporation, and indicate all members, if any, who are legal entities. If there are no such members, write "no members."

Name	Title
<u>Jackie Taylor</u>	<u>Executive Director</u>
_____	_____
_____	_____

b(1). If the Matter is a procurement and the Undersigned is a corporation whose shares are registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, please provide the following information concerning shareholders who own shares equal to or in excess of 7.5% of the corporation's outstanding shares.

Name	Business Address	Percentage Interest
<u>na</u>		
_____	_____	_____
_____	_____	_____

b(2). If the Matter is not a procurement, and the Undersigned is a corporation whose shares are registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, please provide the following information concerning shareholders who own shares equal to or in excess of 10% of the corporation's outstanding shares.

Name	Business Address	Percentage Interest
<u>na</u>		
_____	_____	_____
_____	_____	_____

c. For corporations that are not registered on a national securities exchange pursuant to the Securities Exchange Act of 1934, list below the name, business address and percentage of ownership interest of each shareholder.

Name	Business Address	Percentage Interest
	<i>na</i>	

2. IF THE UNDERSIGNED IS A PARTNERSHIP OR JOINT VENTURE:  
For general or limited partnerships or joint ventures: list below the name, business address and percentage of ownership interest of each partner. For limited partnerships, indicate whether each partner is a general partner or a limited partner.

Name	Business Address	Percentage Interest
	<i>na</i>	

3. IF THE UNDERSIGNED IS A LIMITED LIABILITY COMPANY:  
a. List below the name, business address and percentage of ownership interest of each (i) member and (ii) manager. If there are no managers, write "no managers," and indicate how the company is managed.

Name	Business Address	Percentage Interest
	<i>na</i>	

b. List below the names and titles of all officers, if any. If there are no officers, write "no officers."

Name	Title
<i>na</i>	

4. IF THE UNDERSIGNED IS A LAND TRUST, BUSINESS TRUST, ESTATE OR OTHER SIMILAR ENTITY:

a. List below the name and business address of each individual or legal entity holding legal title to the property that is the subject of the trust.

Name	Business Address
<i>na</i>	

b. List below the name, business address and percentage of beneficial interest of each beneficiary on whose behalf title is held.

Name	Business Address	Percentage Interest
<i>na</i>		

5. IF THE UNDERSIGNED IS ANY OTHER LEGAL ENTITY, first describe the entity, then provide the name, business address, and the percentage of interest of all individuals or legal entities having an ownership or other beneficial interest in the entity.

Describe the entity:

*na*

---

---

Name

Business Address

Percentage Interest

*na*

**SECTION TWO: BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS**

**A. DEFINITIONS AND DISCLOSURE REQUIREMENT**

1. The Undersigned must indicate whether it had a "business relationship" with a City elected official in the 12 months before the date this EDS is signed.

2. Pursuant to Chapter 2-156 of the Municipal Code of Chicago (the "Municipal Code"), a "business relationship" means 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; but a "financial interest" does not include: (i) any ownership through purchase at fair market value or inheritance of less than 1% of the shares 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, (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" does 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.

**B. CERTIFICATION**

1. Has the Undersigned had a "business relationship" with any City elected official in the 12 months before the date this EDS is signed?

Yes

No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

*na*

**SECTION THREE: DISCLOSURE OF RETAINED PARTIES**

**A. DEFINITIONS AND DISCLOSURE REQUIREMENTS**

1. The Undersigned must disclose certain information about attorneys, lobbyists, accountants, consultants, subcontractors, and any other person whom the Undersigned has retained or expects to retain in connection with the Matter. In particular, the Undersigned must disclose the name of each such person, his/her business address, the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Undersigned is not required to disclose employees who are paid solely through the Undersigned's regular payroll.

"Lobbyist" means any person (i) who, for compensation or on behalf of any person other than himself, undertakes to influence any legislative or administrative action, or (ii) any part of whose duty as an employee of another includes undertaking to influence any legislative or administrative action.

2. If the Undersigned is uncertain whether a disclosure is required under this Section, the Undersigned must either ask the City whether disclosure is required or make the disclosure.

**B. CERTIFICATION**

Each and every attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained directly by the Undersigned with respect to or in connection with the Matter is listed below [begin list here, add sheets as necessary]:

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Undersigned (attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated)
Johnson Research Group	343 S. Dearborn, Chgo.	Consultant	est. \$75,000
Steve Friedland	Schiff Hardin, 1000 Sears Tower, Chgo.	attorney	est. \$30,000
John Morris/Morris Architects + Planners	944 W. Huron, Chgo.	architect	est. \$450,000
Langdon Neal	Neal and Levey LLC, 203 N. LaSalle St. # 2300, Chgo.	Attorney	est. \$80,000

CHECK HERE IF NO SUCH INDIVIDUALS HAVE BEEN RETAINED BY THE UNDERSIGNED OR ARE ANTICIPATED TO BE RETAINED BY THE UNDERSIGNED.

**SECTION FOUR: CERTIFICATIONS**

**I. CERTIFICATION OF COMPLIANCE**

For purposes of the certifications in A, B, and C below, the term "affiliate" means any individual or entity that, directly or indirectly: controls the Undersigned, is controlled by the Undersigned, or is, with the Undersigned, under common control of another individual or entity. 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 a business entity following the ineligibility of a business entity to do business with the federal government or a state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity.

A. The Undersigned is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Undersigned or its affiliates delinquent in paying any fine, fee, tax or other charge owed to the City. This includes all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes. If there are any such delinquencies, note them below:

\_\_\_\_\_ *none* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

B. The Undersigned and its affiliates have not, in the past five years, been found in violation of any City, state or federal environmental law or regulation. If there have been any such violations, note them below:

\_\_\_\_\_ *none* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.



C. If the Undersigned is the Applicant, the Undersigned and its affiliates will not use, nor permit their subcontractors to use, any facility on the U.S. EPA's List of Violating Facilities in connection with the Matter for the duration of time that such facility remains on the list.

D. If the Undersigned is the Applicant, the Undersigned will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Section Four, I, (A-C) above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Undersigned has reason to believe has not provided or cannot provide truthful certifications.

If the Undersigned is unable to make the certifications required in Section Four, paragraph I (C) and (D) above, provide an explanation:

\_\_\_\_\_  
na  
\_\_\_\_\_  
\_\_\_\_\_

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

**II. CHILD SUPPORT OBLIGATIONS - CERTIFICATION REGARDING COURT-ORDERED CHILD SUPPORT COMPLIANCE**

For purposes of this part, "Substantial Owner" means any individual who, directly or indirectly, owns or holds a 10% or more interest in the Undersigned. *Note: This may include individuals disclosed in Section One (Disclosure of Ownership Interests), and individuals disclosed in an EDS filed by an entity holding an interest in the Applicant.*

If the Undersigned's response below is #1 or #2, then all of the Undersigned's Substantial Owners must remain in compliance with any such child support obligations until the Matter is completed. Failure of the Undersigned's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either #1 or #2 constitutes an event of default.

Check one:

- JT ~~1~~ 1. No Substantial Owner has been declared in arrearage on any child support obligations by the Circuit Court of Cook County, Illinois or by another Illinois court of competent jurisdiction.
2. The Circuit Court of Cook County, Illinois 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, Illinois or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on child support obligations and (a) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed; or (b) 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 (a) and (b).
- JT (X) 4. There are no Substantial Owners.

**III. FURTHER CERTIFICATIONS**

A. The Undersigned and, if the Undersigned is a legal entity, its principals (officers, directors, partners, members, managers, executive director):

1. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
2. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or 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;

3. are not presently 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 clause (A)(2) of this section;
4. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
5. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, in any criminal or civil action instituted by the City or by the federal government, any state, or any other unit of local government.

B. The certifications in subparts B and D concern:

- the Undersigned;
- any party participating in the performance of the Matter ("an **Applicable Party**");
- any "**Affiliated Entity**" (meaning an individual or entity that, directly or indirectly: controls the Undersigned, is controlled by the Undersigned, or is, with the Undersigned, under common control of another individual or entity. 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 a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Applicable Parties, the term Affiliated Entity means an individual or entity that directly or indirectly controls the Applicable Party, is controlled by it, or, with the Applicable Party, is under common control of another individual or entity;
- any responsible official of the Undersigned, any Applicable Party or any Affiliated Entity or any other official, agent or employee of the Undersigned, any Applicable Party or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Undersigned, any Applicable Party or any Affiliated Entity (collectively "Agents").

Neither the Undersigned, nor any Applicable Party, nor any Affiliated Entity of either the Undersigned or any Applicable Party nor any Agents have, during the five years before the date this EDS is signed, or, with respect to an Applicable Party, an Affiliated Entity, or an Affiliated Entity of an Applicable Party during the five years before the date of such Applicable Party's or Affiliated Entity's contract or engagement in connection with the Matter:

1. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  2. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty 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
  3. made an admission of such conduct described in (1) or (2) above that is a matter of record, but have not been prosecuted for such conduct; or
  4. violated the provisions of Section 2-92-610 of the Municipal Code (**Living Wage Ordinance**).
- C. The Undersigned understands and shall comply with (1) the applicable requirements of the Governmental Ethics Ordinance of the City, Title 2, Chapter 2-156 of the Municipal Code; and (2) all the applicable provisions of Chapter 2-56 of the Municipal Code (Office of the Inspector General).
- D. Neither the Undersigned, Affiliated Entity or Applicable Party, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
- E. If the Undersigned is unable to certify to any of the above statements in this Part III, the Undersigned must explain below:

\_\_\_\_\_

*na*

\_\_\_\_\_

\_\_\_\_\_

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

**IV. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION**

For purposes of this Part IV, under Section 2-32-455(b) of the Municipal Code, the term "financial institution" means a bank, savings and loan association, thrift, credit union, mortgage banker, mortgage broker, trust company, savings bank, investment bank, securities broker, municipal securities broker, securities dealer, municipal securities dealer, securities underwriter, municipal securities underwriter, investment trust, venture capital company, bank holding company, financial services holding company, or any licensee under the Consumer Installment Loan Act, the Sales Finance Agency Act, or the Residential Mortgage Licensing Act. However, "financial institution" specifically shall not include any entity whose predominant business is the providing of tax deferred, defined contribution, pension plans to public employees in accordance with Sections 403(b) and 457 of the Internal Revenue Code. [Additional definitions may be found in Section 2-32-455(b) of the Municipal Code.]

**A. CERTIFICATION**

The Undersigned certifies that the Undersigned [check one]

is  
 is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

**B. If the Undersigned IS a financial institution, then the Undersigned pledges:**

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Undersigned is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

\_\_\_\_\_  
na  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

**V. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS**

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part V.

1. In accordance with Section 2-156-110 of the Municipal Code:  
Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person in the Matter?  
 Yes                       No

**NOTE: If you answered "No" to Item V(1), you are not required to answer Items V(2) or (3) below. Instead, review the certification in Item V(4) and then proceed to Part VI. If you answered "Yes" to Item V(1), you must first respond to Item V(2) and provide the information requested in Item V(3). After responding to those items, review the certification in Item V(4) and proceed to Part VI.**

2. Unless sold pursuant to a process of competitive bidding, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part V.

Does the Matter involve a City Property Sale?  
 Yes                       No

3. If you answered "yes" to Item V(1), provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest
- | Name | Business Address | Nature of Interest |
|------|------------------|--------------------|
|------|------------------|--------------------|

na		

4. The Undersigned further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

**VI. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

The Undersigned has searched any and all records of the Undersigned and any and all predecessor entities for records of investments or profits from slavery, the slave industry, or slaveholder insurance policies from the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves) and has disclosed in this EDS any and all such records to the City. In addition, the Undersigned must disclose the names of any and all slaves or slaveholders described in those records. Failure to comply with these disclosure requirements may make the Matter to which this EDS pertains voidable by the City.

**Please check either (1) or (2) below. If the Undersigned checks (2), the Undersigned must disclose below or in an attachment to this EDS all requisite information as set forth in that paragraph (2).**

1. The Undersigned verifies that (a) the Undersigned has searched any and all records of the Undersigned and any and all predecessor entities for records of investments or profits from slavery, the slave industry, or slaveholder insurance policies, and (b) the Undersigned has found no records of investments or profits from slavery, the slave industry, or slaveholder insurance policies and no records of names of any slaves or slaveholders.

2. The Undersigned verifies that, as a result of conducting the search in step (1)(a) above, the Undersigned has found records relating to investments or profits from slavery, the slave industry, or slaveholder insurance policies and/or the names of any slaves or slaveholders. The Undersigned verifies that the following constitutes full disclosure of all such records:

---

---

---

---

**SECTION FIVE: CERTIFICATIONS FOR FEDERALLY-FUNDED MATTERS**

**I. CERTIFICATION REGARDING LOBBYING**

A. List below the names of all individuals registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Undersigned with respect to the Matter. [Begin list here, add sheets as necessary]:

\_\_\_\_\_  
na  
\_\_\_\_\_  
\_\_\_\_\_

***[If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Undersigned means that NO individuals registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Undersigned with respect to the Matter.]***

B. The Undersigned has not spent and will not expend any federally appropriated funds to pay any individual listed in Paragraph (A) above for his or her lobbying activities or to pay any individual to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

C. The Undersigned will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs I(A) and I(B) above.

If the Matter is federally funded and any funds other than federally appropriated funds have been or will be paid to any individual for influencing or attempting to influence an officer or employee of any agency (as defined by applicable federal law), a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the Matter, the Undersigned must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The form may be obtained online from the federal Office of Management and Budget (OMB) web site at <http://www.whitehouse.gov/omb/grants/sflllin.pdf>, linked on the page [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).



D. The Undersigned certifies that either (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

E. If the Undersigned is the Applicant, the Undersigned must obtain certifications equal in form and substance to paragraphs I(A) through I(D) above from all subcontractors before it awards any subcontract and the Undersigned must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## **II. CERTIFICATION REGARDING NONSEGREGATED FACILITIES**

A. If the Undersigned is the Applicant, the Undersigned does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

"Segregated facilities," as used in this provision, means any waiting rooms, work areas, restrooms, washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of habit, local or employee custom, or otherwise.

However, separated or single-user restrooms and necessary dressing or sleeping areas must be provided to assure privacy between the sexes.

B. If the Undersigned is the Applicant and the Matter is federally funded, the Undersigned will, before the award of subcontracts (if any), obtain identical certifications from proposed subcontractors under which the subcontractor will be subject to the Equal Opportunity Clause. Contracts and subcontracts exceeding \$10,000, or having an aggregate value exceeding \$10,000 in any 12-month period, are generally subject to the Equal Opportunity Clause. See 41 CFR Part 60 for further information regarding the Equal Opportunity Clause. The Undersigned must retain the certifications required by this paragraph (B) for the duration of the contract (if any) and must make such certifications promptly available to the City upon request.

C. If the Undersigned is the Applicant and the Matter is federally funded, the Applicant will forward the notice set forth below to proposed subcontractors:

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

Subcontractors must submit to the Contractor a Certification of Nonsegregated Facilities before the award of any subcontract under which the subcontractor will be subject to the federal Equal Opportunity Clause. The subcontractor may submit such certifications either for each subcontract or for all subcontracts during a period (e.g., quarterly, semiannually, or annually).

**III. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

Federal regulations require prospective contractors for federally funded Matters (e.g., the Applicant) and proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. (NOTE: This Part III is to be completed only if the Undersigned is the Applicant.)

- A. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)  
 Yes             No             N/A
- B. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?  
 Yes             No             N/A
- C. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?  
 Yes             No             N/A

**SECTION SIX: NOTICE AND ACKNOWLEDGMENT REGARDING CITY GOVERNMENTAL ETHICS AND CAMPAIGN FINANCE ORDINANCES**

The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on individuals or entities seeking City contracts, work, business, or transactions. The Board of Ethics has developed an ethics training program for such individuals and entities. The full text of these ordinances and the training program is available on line at [www.cityofchicago.org/Ethics/](http://www.cityofchicago.org/Ethics/), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The following is descriptive only and does not purport to cover every

aspect of Chapters 2-156 and 2-164 of the Municipal Code. The Undersigned must comply fully with the applicable ordinances.

**BY CHECKING THIS BOX THE UNDERSIGNED ACKNOWLEDGES THAT THE UNDERSIGNED UNDERSTANDS THAT THE CITY'S GOVERNMENTAL ETHICS AND CAMPAIGN FINANCING ORDINANCES, AMONG OTHER THINGS:**

- 1) Provide that any contract negotiated, entered into or performed in violation of the City's ethics laws can be voided by the City.
- 2) Limit the gifts and favors any individual or entity can give, or offer to give, to any City official, employee, contractor or candidate for elected City office or the spouse or minor child of any of them, including:
  - a. any cash gift or any anonymous gift; and
  - b. any gift based on a mutual understanding that the City official's or employee's or City contractor's actions or decisions will be influenced in any way by the gift.
- 3) Prohibit any City elected official or City employee from having a financial interest, directly or indirectly, in any contract, work, transaction or business of the City, if that interest has a cost or present value of \$5,000 or more, or if that interest entitles the owner to receive more than \$2,500 per year.
- 4) Prohibit any appointed City official from engaging in any contract, work, transaction or business of the City, unless the matter is wholly unrelated to the appointed official's duties or responsibilities.
- 5) Provide that City employees and officials, or their spouses or minor children, cannot receive compensation or anything of value in return for advice or assistance on matters concerning the operation or business of the City, unless their services are wholly unrelated to their City duties and responsibilities.
- 6) Provide that former City employees and officials cannot, for a period of one year after their City employment ceases, assist or represent another on any matter involving the City if, while with the City, they were personally and substantially involved in the same matter.

- 7) Provide that former City employees and officials cannot ever assist or represent another on a City contract if, while with the City, they were personally involved in or directly supervised the formulation, negotiation or execution of that contract.

**SECTION SEVEN: CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE**

The Undersigned understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Undersigned understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded, void or voidable), at law, or in equity, including terminating the Undersigned's participation in the Matter and/or declining to allow the Undersigned to participate in other transactions with the City.

C. Some or all of the information provided on this EDS and any attachments to this EDS 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 EDS, the Undersigned waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

D. The Undersigned has not withheld or reserved any disclosures as to economic interests in the Undersigned, or as to the Matter, or any information, data or plan as to the intended use or purpose for which the Applicant seeks City Council or other City agency action.

E. The information provided in this EDS must be kept current. In the event of changes, the Undersigned must supplement this EDS up to the time the City takes action on the Matter.

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS on behalf of the Undersigned, and (2) warrants that all certifications and statements contained in this EDS are true, accurate and complete as of the date furnished to the City.

Jackie Taylor  
(Print or type name of individual or legal entity submitting this EDS)

Date: April 29, 05

By: Jackie Taylor  
(sign here)

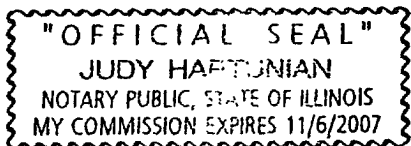
Print or type name of signatory:  
Jackie Taylor

Title of signatory:  
Executive Director

Subscribed to before me on [date] April 29, 05, at Cook County,  
[state].

Judy Harkunian Notary Public.

Commission expires: 11/6/07.



**(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Undersigned must complete a new EDS with correct or corrected information)**

**RECERTIFICATION**

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with BLACK ENSEMBLE THEATER [Identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Undersigned, (2) warrants that all certifications and statements contained in the Undersigned's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

JACKIE TAYLOR Date: OCT 21, 05

(Print or type name of individual or legal entity submitting this recertification)

By: [Signature]  
(signature)

Print or type name of signatory:

JACKIE TAYLOR

Title of signatory:

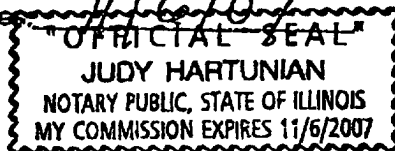
EXECUTIVE DIRECTOR

Subscribed to before me on [date] October 21 at Cook County, Illinois [state].

[Signature] Notary Public.

Commission expires 11/6/2007

Ver. 8/23/03



23