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Doc#: 111131088 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 04/21/2011 03:29 PM Pg: 1 of 12

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

**FIRST AMENDMENT
TO
BLACK ENSEMBLE THEATER
REDEVELOPMENT AGREEMENT**

This First Amendment to Black Ensemble Theater Redevelopment Agreement (this "**Amendment**") is made as of this 30th day of March, 2011, the date that the conditions described in Article II of this Amendment have been complied with to the City's satisfaction (the "**Effective Date**") by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), acting by and through its Department of Housing and Economic Development ("**DHED**"), formerly known as the Department of Planning and Development and the Department of Community Development, and The Black Ensemble Theater Corporation, an Illinois not-for-profit corporation (the "**Developer**").

RECITALS

A. Developer and the City have entered into the Black Ensemble Theater Redevelopment Agreement dated as of February 10, 2006 (the "**RDA**"), which was recorded with the Recorder of

Deeds of Cook County on February 17, 2006 as Document No. 0604827090 pursuant to which the City provided additional financing to assist Developer in completing the Project (as defined in the RDA), which is located on the property described in Exhibit A attached hereto (the "Property"). Capitalized terms not otherwise defined in this Amendment shall have the meanings given them in the RDA.

B. The parties desire to amend the RDA to, among other things, change the start and completion dates for the Project.

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:

ARTICLE I. RECITALS

The foregoing recitals are hereby incorporated into this Amendment by reference and made a contractual part hereof.

ARTICLE II. CLOSING CONDITIONS

The effectiveness of this Amendment is subject to the covenants and agreements contained herein, and the satisfaction of the following conditions (collectively, the "Closing Conditions"):

(A) Amendment. The execution of this Amendment by all parties and the recording of this Amendment;

(B) Title. The Developer has furnished the City with a date down endorsement to the Title Policy for the Property, certified by the Title Company, dated within ten days before the date this Amendment is signed, showing the Developer as the named insured, satisfying the requirements described in Section 5.05 of the RDA and noting the recording of this Amendment as an encumbrance against the Property;

(C) Evidence of Clean Title. The Developer, at its own expense, has provided the City with searches, updated within twenty days before the date this Amendment is signed, as described under Section 5.06 of the RDA, showing no liens against the Developer, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens;

(D) Opinion of the Developer's Counsel. The Developer has furnished the City with an opinion of counsel, substantially in the form attached as Exhibit J to the RDA, with such changes as required by or acceptable to Corporation Counsel; provided, that 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;

(E) Corporate Documents; Economic Disclosure Statement. The Developer has delivered to the City the following documents accompanied by a certificate of the secretary or authorized officer of each entity certifying them as true, correct and complete copies that have not been amended or modified: (i) Articles of Organization or Articles of Incorporation, as applicable, (ii) good standing certificate, (iii) written consent or resolutions authorizing the execution of this Amendment, (iv) evidence of incumbency, and (v) operating agreement or bylaws, as applicable. The Developer has delivered Economic Disclosure Statement(s), in the City's then current form, dated the date hereof.

ARTICLE III. AMENDMENTS TO AGREEMENT

A. Department. Throughout the RDA, all references to "Department of Planning and Development" and "DPD" are deleted and replaced by references to the "Department of Housing and Economic Development" and "DHED", respectively.

B. The Project.

Section 3.01 of the RDA is amended by deleting in their entirety the words "(i) complete 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" and replacing them with the words "(i) commence construction no later than March 1, 2011 and complete construction and conduct business operations therein no later than March 1, 2012, or such time provided by agreement of the parties.

C. Treatment of Prior Expenditures

Section 4.07 is amended by the insertion of the following at the end of such section: "Notwithstanding anything to the contrary contained herein; the City hereby approves a Certificate of Expenditure in the amount of \$4.5 million, which reflects the value of the City Note as of the date hereof and which applicability is retroactive to the Closing Date, and which Certificate of Expenditure and City Note may be increased to the Maximum principal amount of \$6 million. The City and the Developer may agree to amend the City Note and adjust any previously approved payment or amortization schedule delivered in connection with this Agreement in order to reflect the representations set forth in this section."

D. Cooperation in Investigations

The following paragraphs are added as Section 8.22:

"It is the duty of the Developer and any bidder, proposer, contractor, subcontractor and every applicant for certification of eligibility for a City contract or program, and all officers, directors,

agents, partners, and employees of the Developer and any such bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Developer represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

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

E. Eligibility to Do Business

The following section is added to the end of Section 5.14:

“Failure by the Developer or any controlling person (as defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code shall be grounds for termination of the RDA and the transactions contemplated hereby.”

ARTICLE IV.

COVENANTS, REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Developer covenants, represents and warranties that:

- (a) such party has the right, power and authority to enter into, execute, deliver and perform this Amendment. The execution, delivery and performance by such party of this Amendment have been duly authorized by all necessary action, and do not and will not violate its Articles of Organization, Articles of Incorporation, Operating Agreement or Bylaws, as applicable, any applicable provision of law, or constitute a breach of, default under or require the consent under any agreement, instrument or document to which such party is now a party or by which such party is now or may become bound, and
- (b) such party is not in default with respect to any provision of the RDA, the agreements evidencing the Lender Financing or any related agreements.

ARTICLE V. MISCELLANEOUS

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

B. No Effect on Recording Priority of RDA or Subordination Agreement. The parties agree that entering into this Amendment shall have no effect on the recording priority of the RDA (or any outstanding subordination agreement that might relate thereto) and that this Amendment shall relate back to the dates that each of the RDA (or any outstanding subordination agreement that might relate thereto) were originally recorded in the land title records of Cook County, Illinois.

C. No Change in Defined Terms. All capitalized terms not otherwise defined herein, shall have the same meanings as set forth in the RDA.

D. Other Terms in the RDA Remain; Conflict.

(a) Except as explicitly provided in this Amendment, all other provisions and terms of the RDA shall remain unchanged.

(b) In the event of a conflict between any provisions of this Amendment and the provisions of the RDA, the provisions of this Amendment shall control. Other than as specifically modified hereby, the terms and conditions of the RDA shall remain in effect with respect to the parties thereto.

E. Representations and Warranties of Developer. Developer acknowledges and agrees that, notwithstanding any other terms or provisions of this Amendment to the contrary, Developer shall remain liable for all of its obligations and liabilities under the RDA, as amended by this Amendment.

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

G. Recording and Filing. Developer shall cause this Amendment to be recorded and filed on the date hereof against the Property legally described in Exhibit A hereto in the conveyance and real property records of the county in which the Property is located. Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, Developer shall immediately transmit to the City an executed original of this Amendment showing the date and recording number of record.

H. 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.

I. Counterparts. This Amendment 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.

J. Governing Law. This Amendment 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.

K. Binding Effect. This Amendment shall be binding upon Developer and the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of Developer and the City and their respective successors and permitted assigns (as provided herein).

L. No Business Relationship with City Elected Officials. Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion of any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to the RDA or this Amendment or in connection with the transactions contemplated hereby and thereby, shall be grounds for termination of the RDA or this Amendment and the transactions contemplated hereby and thereby. 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 Amendment or the transactions contemplated thereby.

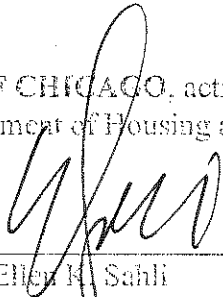
M. Severability. If any provision in this Amendment, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Amendment shall be construed as if such invalid part were never included herein and the remainder of this Amendment shall be and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

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

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

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

CITY OF CHICAGO, acting by and through
its Department of Housing and Economic Development

By: 
Name: Ellen K. Sahli
Title: Managing Deputy Commissioner

THE BLACK ENSEMBLE THEATER
CORPORATION.
an Illinois not-for-profit company

By: _____
Title: Executive Director

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

Development

CITY OF CHICAGO, acting by and through
its Department of Housing and Economic

By: _____
Name: Ellen K. Sahli
Title: Managing Deputy Commissioner

**THE BLACK ENSEMBLE THEATER
CORPORATION**,
an Illinois not-for-profit company

By: _____
Title: Executive Director

By: _____
Title: Treasurer

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, GWENDOLYN SEA, 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 The 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 Developer, 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 18 day of April, 2011.

Gwendolyn Sea
Notary Public

My Commission Expires 6-11-2011

(SEAL)

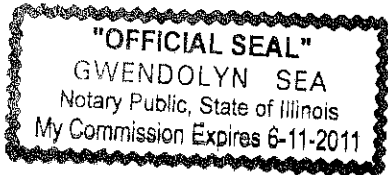


EXHIBIT A

The Property

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

Property Address: 4440-4450 N. Clark Street, 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.