

LEASE AGREEMENT

AGREEMENT OF LEASE made and entered into as of *August 9, 1973*
by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body, politic
and corporate, organized under the laws of the Commonwealth of
Massachusetts, its successors or assigns, (hereinafter called "Lessor"),
and BOSTON CENTER FOR THE ARTS, INC., a charitable corporation, duly
organized and existing under Chapter 180 of the laws of the Commonwealth
of Massachusetts, with a principal place of business in Boston,
Massachusetts, (hereinafter together with any successors or assigns
, permitted or authorized by this Lease called "Lessee").

W I T N E S S E T H:

ARTICLE I

Lease of Premises

Section 1.01. Lessor, for and in consideration of the rents, covenants
and agreements hereinafter reserved, mentioned and contained on the part
of Lessee to be paid, kept, observed and performed, has leased, rented,
let and demised, and by these presents does lease, rent, let and demise
unto Lessee, and Lessee does hereby take and hire, upon and subject to
the conditions and limitations hereinafter expressed, that certain
"property" (as defined in Section 2.01 hereof), TO HAVE AND TO HOLD the
erty, subject as aforesaid, and subject to the terms, covenants,
rents and provisions hereof, unto Lessee for the uses and purposes

described in Article IV hereof for the "Term" (as defined in Section 5.01 hereof).

ARTICLE II

Definitions

Section 2.01. The term "Property" shall mean the parcels of land described in Schedule "A" attached hereto and hereby made a part hereof ← ? together with all improvements, fixtures, appurtenances and easements, and all alterations, replacements, additions and substitutions therefor, now or hereafter located thereon.

Section 2.02. The term "Plan" shall mean the South End Urban Renewal Plan dated December 6, 1965, and recorded with Suffolk Registry of Deeds in Book 8269 , Page 447 , as amended.

Section 2.03. The term "Sublease" shall mean a sublease between Lessee and a "Subtenant" (as defined in Section 2.01 hereof) of any individual parts, floors or areas of the Property which Lessee is permitted to sublet hereunder.

Section 2.04. The term "Subtenant" shall mean any person, firm, corporation or other legal entity occupying any part of the Property under a Sublease.

Section 2.05. The terms ^{Construction, Reconstruction} "Rehabilitation" shall mean the restoration and renovation of the Property pursuant to Article ~~X~~ ^{VIII} hereof.

Section 2.06. The term "Project Area" shall mean the urban renewal project area covered by the Plan.

Section 2.07. The term "City" shall mean the City of Boston, Massachusetts.

Section 2.08. The term "Commencement Date" shall mean the first day of the Term.

Section 2.09. The term "Improvements" shall mean all improvements constructed, restored, or renovated by Lessee pursuant to Article ~~X~~ VIII ← hereof, including those which are part of the Property as of the date hereof.

Section 2.10. The term "Final Working Drawings and Specifications" shall mean the drawings and specifications required pursuant to Stage IV of Lessor's design review process as set forth in Technical Guide Number Fifteen, "Design Review in Urban Renewal", published by the Urban Renewal Administration,

Section 2.11. The term "Architect" shall ^{mean} Ecotecture, Inc., of Cambridge, Massachusetts, or such other architect, as may be designated by Lessee and approved by Lessor.

Section 2.12. The term "Taking" shall refer to a taking (or the sale to a public authority after legal notice of a taking) of all or part of the Property or any interest therein or right accruing thereto, as the result of or in lieu of condemnation or exercise of the power of eminent domain. A taking shall be effective for the purposes of this Lease as of the date on which possession is required to be surrendered.

~~Section 2.13. The term "construction" shall refer to the building of new structures on the leased premises.~~

Section 2.13 The term "Lessor" shall mean the Boston Redevelopment Authority and shall be interchangeable with the terms "Authority" and "Agency" also found in this document.

Section 2.14 The term "Lessee" shall mean the Boston Center for the Arts, Inc. and shall be interchangeable with the term "Redeveloper".

Section 2.15. The term "Lease" shall mean this lease and shall be interchangeable.

ARTICLE III

Title and Condition of Property

Section 3.01. The Property is subject to:

- (a) the existing state of title thereof as of the Commencement Date;
- (b) any state of facts which an accurate survey or physical inspection thereof might show;
- (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction;
- (d) the physical condition of buildings, structures and other improvements, and any fixtures, located on the Property as of the Commencement Date without representation or warranty of any kind by Lessor.

Lessee represents to Lessor that it has examined (i) the title to the Property and (ii) all matters related to subsections (a), (b), (c) and (d) above, prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereof.

Section 3.02. Lessor hereby expressly disclaims any warranties of any nature, express or implied, as to the structural integrity of the Property, and any other warranties of any nature, express, implied or otherwise, except as expressly set forth in this Lease. Lessee hereby accepts the Property "as is".

Lessor warrants that during its ownership of the Property it has not created any mortgages, liens or encumbrances which remain of record at the date hereof, and warrants that the Property is free of liens and use agreements except for leases to the Trustees of the Trust for the Boston Land...

ARTICLE IV

Use of Property: Quiet Enjoyment

Section 4.01. Lessee agrees for itself, its successors and assigns, and every successor in interest to the leasehold estate in the Property, or any part thereof, that Lessee and such successors and assigns, shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in the Plan and this Lease;
- (b) not discriminate upon the basis of race, color, religion, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property to any improvements erected or to be erected thereon, or any part thereof; and

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Section 4.02. The agreements and covenants provided in Section 4.01 hereof shall be covenants running with the land and shall, in any event, and without regard to technical classification or designation, legal or other wise, and except only as otherwise specifically provided in this Lease, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Lessor, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, and the owner, lessor or lessee of any other land (or of any interest in such land) which is subject to the land use requirements and restrictions of the Plan, and the United States of America (hereinafter called the "United States"), (in the case of the covenant provided in Subsection 4.01(b) hereof) against Lessee and every successor in interest to the leasehold estate in the Property, or any part thereof or any interest therein. The agreement and covenant provided in Subsection 4.01(a) hereof shall remain in effect throughout the Term, at which time such agreement and covenant shall terminate, and the agreements and covenants provided in Subsection 4.01(b) hereof shall remain in effect without limitation as to time, provided, that such agreements and covenants shall be binding on Lessee, each successor in interest to the leasehold estate in the Property, and every part thereof, respectively, only for such period as such successor or party shall have an interest in the Property or any part thereof.

Section 4.03. In amplification, and not in restriction, of the provisions of Section 4.02 hereof, it is intended and agreed that Lessor and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 4.01 hereof, and the United States shall be deemed a beneficiary of the covenant provided in Subsection 4.01(b) hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of Lessor and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether Lessor or the United States has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. Lessor shall have the right, in the event of any breach of any such agreement or covenant, and the United States shall have the right in the event of any breach of the covenant provided in Subsection 4.01(b) hereof, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 4.04. Lessor represents and warrants that it has the right, power and authority to enter into this Lease and that Lessee, upon paying the

Public Charges

~~City Payments~~, Basic Rent (as defined in Section 6.01 hereof) and additional rents reserved herein and observing and keeping the covenants, agreements and stipulations of this Lease on its part to be paid, observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Property during the Term, without hindrance, ejection or molestation by Lessor or any person or persons claiming under Lessor; provided, that Lessor and its agents may enter and examine the Property at all reasonable times. Lessee shall have the right to terminate this Lease or to seek a rent abatement for a material breach of this covenant.

ARTICLE V

Term of Lease

Section 5.01. The term of this Lease (hereinafter called the "Term"), shall be the period commencing on the date hereof and ending at midnight on the last day of the fortieth year thereafter, or on that date resulting from an earlier termination as hereinafter set forth; provided, however, that the Lessee by giving written notice thereof to the Lessor within six (6) months of the expiration of the original term may extend the term of this lease for an additional term of forty (40) years.

ARTICLE VI

Rent

Section 6.01. Lessee covenants to pay to Lessor, at Lessor's address for notice set forth in Section 1806 hereof or at such place or to such person as Lessor from time to time may designate in writing by notice to Lessee, in such coin or currency of the United States as shall at the

time of payment be legal tender for the payment of all debts, public or private, as rent ("Annual Rent") for the Property, commencing on the Commencement date and thereafter throughout the Term, which Annual Rental is 6 3/4 percent of the Fee Purchase Price of

annual rent \$2,900/yr

\$215,000.00

The Annual Rent shall be payable in equal quarterly installments in advance not later than the tenth day of the month during which any such quarterly installment is due and payable. The first quarterly installment of the Annual Rent shall be paid upon commencement of the Lease Term. Prorations of Annual Rent required pursuant to the Agreement shall be at the daily rate of one ninetieth of one quarterly installment of the Annual Rent.

The Lessee covenants and agrees that the Annual Rent and any interest thereon which may become payable to the Authority pursuant to the Agreement shall be a valid first and prior lien upon the leasehold estate in the Property created by the Agreement, and upon the rights, title and interests of the Lessee in and under the Agreement, paramount to the lien of any mortgage which the Lessee may execute thereon, or to any other lien (other than a lien for Public Charges) thereon which may be caused by the Lessee.

Hereafter the parties agree to use best efforts to obtain the agreement of the United States Department of Housing and Urban Development ("HUD") to a reduction in the Annual Rental hereunder to \$1.00 per year. If HUD agrees to any reduction of Annual Rent below the amount originally provided herein, the parties agree to amend this lease to reflect such reduced Annual Rent figure, such amendment to be possible and reduction

Section 6.02. This Lease is a net lease and the Annual Rent and all other sums payable hereunder to or on behalf of the Lessor, shall be paid without notice or demand, and without set-off, counterclaim, abatement, suspension, deferment, deduction or defense. net
lease

Section 6.03. Except as otherwise expressly herein provided, this Lease shall not terminate, nor shall Lessee have the right to terminate this Lease or be entitled to the abatement of any rent hereunder or any reduction or allocation thereof, nor shall the obligations of Lessee under this Lease be otherwise affected, by reason of any damage to or the destruction of all or any part of the Property from whatever cause, or the taking of the Property or any portion thereof by condemnation, requisition or otherwise for any reason whatever, or the prohibition, limitation or restriction of Lessee's use of all or any part of the Property, or the interference with such use by any person, or by reason of any eviction by paramount title or otherwise or by reason of the foreclosure of any Leasehold Mortgage or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of parties hereto that the obligations of Lessee hereunder shall be separate and independent covenants and agreements, that the Annual Rent and all other sums payable by Lessee hereunder shall continue to be payable in all events, and that the obligations of Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

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Section 6.04. Lessee covenants and agrees that it will remain obligated under this Lease in accordance with its terms, and that Lessee will not take any action to terminate, rescind or avoid this Lease, by virtue of the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Lessor or any assignee of Lessor, or by virtue of any action with respect to this Lease which may be taken by any trustee or receiver of Lessor or any assignee of Lessor in any such proceeding, or by any court in any such proceeding; provided however, that nothing in this Section 6.04 shall be construed as a waiver of any of the Lessee's rights as specified in this Lease.

ARTICLE VII

Public Charges, Mechanics' Liens and
Other Claims and Costs

Section 701. Covenant for Payment of Public Charges. On and after the commencement of the Lease Term and so long as the Lease Term should not have expired or have been terminated pursuant to the Agreement, the Redeveloper covenants and agrees to pay and discharge, as if the Redeveloper owned the Property in fee simple, before any fine, penalty, interest or cost may be added, all taxes, water rents, and other public charges (hereinafter called "Public Charges") which, if not paid, would be a charge, claim or lien upon or against the Property, or any part thereof, or any building, structure or improvement, or any part thereof, located on the Property, or upon or against the Annual Rent, or upon or against the Authority, ^{excluding any income tax of general application.} Notwithstanding the provisions of the preceding sentence, the Redeveloper shall have the right to contest the amount or validity, in whole or in part, of any Public Charges by appropriate proceedings and, if the Redeveloper is prosecuting such proceedings with reasonable diligence, may, to the extent permitted by law, postpone or defer payment of Public Charges so long as such contest shall continue. ✓

Section 702. Proration Public Charges. All Public Charges relating to a period prior to the commencement of the Lease Term, and all public charges allocable to improvements of the Property which have been demolished by the Authority shall be paid by the Authority. Public charges relating to a fiscal period (i) a part of which occurs prior to the commencement of the Lease Term and a part of which occurs thereafter, or (ii) a part of which occurs after the expiration or termination of the Lease Term pursuant to the Agreement, whether or not such public charges are imposed or become a lien upon the Property or become payable during the Lease Term, shall be adjusted

Sec. 701 (Sec.) between the Authority and the Redeveloper as of the date of commencement, expiration or termination of the Lease Term so that the Redeveloper shall pay that proportion of the Public Charges which that part of the fiscal period during which the Lease Term was in effect bears to the total fiscal period, and the Authority shall pay the remainder.

Section 703. Evidence of Payment of Public Charges. The Redeveloper, upon request, shall furnish or cause to be furnished, to the Authority, to any Mortgagee, and to FHA, if the Property is encumbered with a mortgage insured, owned or held by FHA, official receipts of the appropriate taxing authorities or other proof satisfactory to said Authority, Mortgagee or FHA, evidencing the payment of any Public Charges which were due and payable on the Property

Section 704. Cancellation or Discharge of Liens Filed. If, because of any act or omission of the Redeveloper, any mechanics' or materialmen's lien or other lien for labor, services or materials shall be filed against the Property, or any building, structure or improvement thereon, or against the Authority, the Redeveloper, at its own cost, shall cause the same to be canceled and discharged or record or bonded within thirty days after the / Notice to Lessee of filing of such lien and shall indemnify and save harmless the Authority from and against any and all costs, expenses, claims, losses and damages, including counsel fees, as a result of or by reason of each such lien.

Section 705. Liens Prohibited. Nothing in the Agreement shall be construed constituting the consent or request of the Authority, express or implied, to any contractor, subcontractor, laborer or material-man for the performance of any labor or the furnishing of any materials or any specific improvements, alteration or repair to, the Property or any part thereof, nor as giving the Redeveloper any right,

on behalf of Lessor

Sec. 705 (Cont.) power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner that would give rise to the filing of mechanics' or other claims against the fee of it being understood that such actions taken by Lessee will be on its own behalf. the Property%. The Authority shall have the right at all reasonable times to post, and keep posted, on the Property any notices which the Agency may deem necessary for the protection of the Agency and of the fee of the Property from mechanics' liens or other claims. In addition, the Redeveloper shall make, or cause to be made, prompt payment of all moneys due and legally owing to all persons doing any work or furnishing any materials or supplies to the Redeveloper or any of its contractors or subcontractors in connection with the Property and any buildings, structures or improvements thereon.

Section 706. Indemnification by Redeveloper. The Redeveloper shall pay, indemnify and save harmless the Authority, its agents and employees, from all suits, claims, demands, damages, losses, and other reasonable expenses and costs of every kind and description to which the Authority, or its agents or employees, may be subjected by reason of injury to persons, death or property damage, resulting from or growing out of any act of commission or omission of the Redeveloper, its agents or employees, or its contractors or subcontractors in connection with (i) any building, construction, installation or development work, service or operation being undertaken or performed by or for the Redeveloper in, on or over the Property, or (ii) any use, occupancy, maintenance, repair, and improvements, or operation of the Property after the commencement of the Lease Term: Provided, That such indemnification shall not be applicable where a decision or judgment of a court of competent jurisdiction indicates that injury, death or property damage was the direct result of acts of commission, omission, negligence or fault of the Authority, its agents or employees.

Section 707. Payment of Litigation Costs by Redeveloper. The Redeveloper shall pay all costs and expenses which may be incurred by, and any moneys due under any judgment or decree rendered against, the Authority (i) in enforcing compliance by the Redeveloper with provisions of the Agreement/ or (ii) in defending any suit or proceeding brought against the Agency, as owner of the fee simple title to the Property, for the violation by the Redeveloper of any law or ordinance during the Lease Term, or (iii) in defending any action or suit (a) for which indemnification is required under Section 706 hereof, or (b) for damages because of any failure, neglect or default on the part of the Redeveloper in the performance of any obligation of the Redeveloper under the Agreement. If the Authority shall, without any fault on its part, be made a party to any litigation with respect to any matter growing out of the Agreement as to which the Redeveloper is at fault, the Redeveloper shall pay all judgments, decrees and costs or expenses incurred by or imposed on the Agency in connection therewith.

ARTICLE VIII

Restrictions and Controls Upon Redevelopment

Section 801. Improvements and Submission of Plans.

(a) The Property shall be used for the construction and rehabilitation of existing buildings for the purpose of establishing and maintaining a Metropolitan Center for the Arts, and its appurtenant facilities, to be built in accordance with the Design Proposal, the Preliminary Working Drawings and Outline Specifications, and the applicable standards and controls of the Plan.

From time to time hereafter and prior to undertaking any new construction or rehabilitation of the project, the Redeveloper shall submit ^{to the Authority Final Working Drawings and Specifications, together with the contract and the distribution of the project} ~~for review~~ a timetable ^{development shall submit}

providing for the submission of all Final Plans and Specifications for all new construction and rehabilitation contemplated within the leased premises which timetable may be revised from time to time with approval by the Authority.

The Authority shall ^{review the final working drawings and specifications} review the Final Working Drawings and Outline Specifications, for conformity with the Preliminary Drawings and Outline Specifications, the Plan and this Agreement, and shall promptly notify the Redeveloper of its approval or disapproval in writing, setting forth in detail any grounds for disapproval. If no grounds of disapproval are delivered in writing to the Redeveloper within ten (10) days after the submission of the Final Working Drawings and Specifications, or any resubmission thereof as hereinafter provided, such drawings and specifications shall be deemed approved.

In the event of a disapproval, the Redeveloper shall, within forty-five (45) days after the date the Redeveloper receives the written notice of such disapproval, resubmit the Final Working Drawings and Specifications altered to meet the grounds of disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until ^{the final} Final Working Drawings and Specifications shall be approved by the Authority,

IN accordance with the timetable for submission of final plans and specifications, the Lessee shall also supply the Authority with a schedule of the financial arrangements contemplated in the construction of improvements in accordance with said approved drawings and specifications. It is of course understood that this financial information is subject to revision due to the uncertainty in securing the necessary donations and grants for the development.

(b) The Redeveloper may make application for a building permit^(S) for the construction of the improvements to be erected on the Property. However, no improvements shall be constructed which are not shown on the approved Final Working Drawings, nor shall any work be done on the construction of the improvements if such work deviates from the approved Final Working Drawings and Specifications in any of the following respects: (1) if the external appearance of the building (including roof and penthouse) is affected in anyway; ^{significant} (2) if there are significant changes in materials or design of the interiors; ^{significant} (3) if there are ^{or} changes in materials, designs, ~~dimensions, or color~~ in the public lobbies, entrances, arcades or open spaces; except and only to the extent that modifications thereof have been requested by the Redeveloper in writing and have been approved in writing by the Authority. ^{*} If the Redeveloper shall fail to comply with the foregoing requirements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Redeveloper so modify or reconstruct such portion or portions of the improvements erected or being erected on the Property as to deviate from the approved Final Working Drawings and Specifications or any approved modifications thereof, as to bring them into conformity therewith. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with construction of such portion of the improvements as are the subject of such a directive until such directive

* Approval may be withheld only for the reasons of non-conformity specified in Section 801 (a) and approval shall be deemed given if notice by disapproval is not sent within 10 days after request for approval.

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Sec. 801 (Cont.) is complied with. No delay in completion of the improvements resulting from such modification or reconstruction shall be a ground for the extension of the time limits of construction on the Property.

(c) In submitting plans and specifications to the Authority for its approval, the Redeveloper shall consider and take into account the planning and design objectives set forth in the Plan, and the Authority shall pursue such objectives in its review of and action upon the plans and specifications so submitted.

(d) Construction of the improvements hereunder shall be in conformity with all applicable state and local laws and regulations except to the extent that deviations therefrom have been specifically requested by the Redeveloper and approved by the Authority and the Mayor of the City pursuant to the provisions of Sec. 13 of Ch. 652 of the Acts of 1960 as amended by Sec. 5 of Ch. 421 of the Acts of 1966.

(e) Submission of Final Working Drawings and Specifications pursuant to this Section 801 shall not be deemed to include submission of the final structural, plumbing, electrical or mechanical plans unless requested by the Authority.

Sec. 801 (Cont.)

(f) It is the general policy of the Authority that all new buildings constructed in Urban Renewal Project Areas shall be so designed as to accommodate the physically handicapped. In furtherance of this policy, plans and specifications ^{for any new building constructed on the property,} shall include provisions conforming insofar as possible with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., located at 2033 West Ogden Avenue, Chicago, Illinois 60612, copyright 1961 by American Standards Association, Inc., located at 10 East 40th Street, New York, N.Y. 10016, incorporated herein by reference. The Authority shall take into consideration the provisions and objectives of said American Standard Specifications in its review of and action upon plans and specifications ^{for any such new buildings} submitted to it pursuant to this Agreement.

(g) The Redeveloper shall erect and properly maintain at all times as required by the conditions and the progress of the work, all necessary safeguards for the protection of workmen and the public. The Redeveloper shall surround the construction site ^{for any new building constructed} at the commencement of construction with a chain-link fence and shall maintain such fencing in place until construction on the site is substantially completed. Where chain-link fencing is impracticable, the Redeveloper may use other types of barriers or fencing with the prior written consent of the Authority

(h) No sign shall be erected or placed on the exterior of any building on the Property, nor on any portion of the Property which is not enclosed within a building, unless the character, location, design, size, shape, form, and lighting of such sign shall have been approved by the Authority in writing. Without limiting in any way the scope of the Authority's review, nor limiting the erection of signs deemed acceptable for this project by the Authority notwithstanding the following, no sign shall be approved which does not meet the following standards:
Signs may only be erected or placed upon

Sec. 801 (Cont.) the ground floor street facade of each store or other individual use. No signs will be permitted on awnings or marquees, if any, nor on projections, if any, over the sidewalk. All signs shall be belt type. Flashing, illuminated signs, exposed neon signs or signs other than those relating to businesses on the site shall not be permitted. For the purposes of this Section, no arcade shall be deemed to constitute a sidewalk.

Section 802: When Improvements Completed - *Certificate of Completion*

When the improvements required of the Redeveloper by the provisions of this Agreement have been built and are substantially ready for occupancy, the Authority shall issue to the Redeveloper a Certificate of Completion which shall be in recordable form and shall be conclusive evidence of the fact that the improvements have been completed.

If the Authority shall refuse or fail to issue such a Certificate in accordance with the provisions of this Section, the Authority shall within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respect the Redeveloper has failed to complete the improvements in accordance with the provisions of this Section, or is otherwise in default, and what measures or actions will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain such a Certificate.

Should the Property be, with the approval of the Authority, divided into two or more separate parcels for the purpose of constructing thereon separate improvements, the Authority may, upon completion of the improvements relating to any such parcel, issue a Certificate of Completion with respect to such separate parcels.

Section 803: Additions or Subtractions to Completed Improvements.

After the improvements required by the Plan and this Agreement to be constructed by the Redeveloper on the Property, or any portion thereof, have been completed, the Redeveloper shall not, until the expiration of the term of the Plan, reconstruct, demolish or subtract therefrom or make any additions thereto or extensions thereof, without the prior written approval of the Authority, if: (a) the external appearance of the building (including roof and penthouse) or Property is affected in any significant way that does not comply with the plan and this lease.

Any such reconstruction, demolition, subtraction, addition, or extension shall in all respects conform to the provisions of the Plan. In the event the Redeveloper shall fail to comply with the foregoing requirements, the Authority may within a reasonable time after its discovery thereof direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

Section 804: Commencement and Completion of Construction of Improvements

The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the leasehold estate in the Property, or

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any part thereof, that the Redeveloper, and such successors and assigns shall diligently prosecute to completion the construction of improvements on the property as promptly as possible in light of the fact that all construction and rehabilitation on the property is to be paid for solely out of such funds as are available therefore from donations and grants to the Redeveloper from private and governmental sources.

And in order that the Authority remain apprised of the construction of improvements the Redeveloper shall at reasonable intervals provide a projected timetable of completion dates of the various new construction and rehabilitation within the leased property. It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement, be, to the fullest extent permitted by law and equity, binding for the benefit of the community and the Agency and enforceable by the Agency against the Redeveloper and its successors and assigns to or of the leasehold estate in the Property or any part thereof or any interest therein.

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ARTICLE IX. RESTRICTIONS ON USE OF PROPERTY

SEC. 901. Restrictions on Use. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the leasehold estate in the Property, or any part thereof, that the Redeveloper, and such successors and assigns, shall:

to

(a) Devote the Property ^{only} to the purposes for which metropolitan centers for the arts are customarily used including theaters, exhibition spaces, studios, work shops, ~~clubs~~ and ensemble halls, ^{restaurants,} rehearsal spaces, classrooms, meeting rooms, office space/and other auxiliary uses designed to serve ^{lessee and} occupants, participants and patrons of the center to and in accordance with, the uses specified in the Urban Renewal Plan; and

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(b) Not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

SEC. 902. Covenants; Binding Upon Successors in Interest; Period of Duration.

It is intended and agreed that the agreements and covenants provided in Section 901 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, and the owner or lessee of any other land (or of any interest in such land) in the Project Area which is subject to the land use requirements and restrictions of the Urban Renewal Plan, and the United States (in the case of the

covenant provided in subsection (b) of Section 901 hereof), against the Redeveloper, its successors and assigns and every successor in interest to the leasehold estate in the Property, or any part thereof or any interest therein. It is further intended and agreed that the agreement and covenant provided in subsection (a) of Section 601 hereof shall remain in effect for the period of time, or until the date, specified or referred to in Section 501 (at which time such agreement and covenant shall terminate) and that the agreements and covenants provided in subsection (b) of Section 901 hereof shall remain in effect without limitation as to time:

Provided, That such agreements and covenants ~~shall~~ shall be binding on the Redeveloper itself, each successor in interest to the leasehold estate in the Property, and every part thereof, respectively, only for such period as such successor or party shall have an interest in the leasehold estate in the Property or part thereof.

The terms "uses specified in the Urban Renewal Plan" and "land use" referring to provisions of the Urban Renewal Plan, or similar language, in the Agreement shall include the land and all building, housing, and other requirements or restrictions of the Urban Renewal Plan pertaining to such land.

SEC. 903. Authority and United States Rights To Enforce. In amplification, and not in restriction of, the provisions of the preceding Section,

it is intended and agreed that the Agency and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 901 hereof, and the United States shall be deemed a beneficiary of the covenant provided in subsection (b) of Section 901 hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Agency and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Agency or the United States has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Agency shall have the right, in the event of any breach of any such agreement or covenant, and the United States shall have the right in the event of any breach of the covenant provided in subsection (b) of Section 601 hereof, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

ARTICLE X. PROHIBITIONS AGAINST ASSIGNMENT, TRANSFER AND SUBLEASE

SEC. 1001. Prohibition Against Transfer of Shares of Stock; Binding Upon Stockholders

Individually. The Redeveloper warrants that it is a charitable corporation, existing pursuant to Chapter 180 of the General Laws of Massachusetts and as such has no stockholder, and further warrants that it shall maintain this charitable status during the full term, including ^{extension} ~~extension~~ of this Lease.

SEC. 1002. Prohibition Against Transfer of Leasehold Estate and Assignment of Agreement.

The Redeveloper represents and agrees for itself, and its successors and assigns, that:

- (a) Except only

(1) by way of security for, and only for, (i) the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the leasehold estate in the Property, or any part thereof, to perform its obligations with respect to making the Improvements under the Agreement, and (ii) any other purpose authorized by the Agreement, and

(2) as to any individual parts or parcels of the Property ~~on which the Improvements to be constructed thereon have been completed, and which, by the terms of the Agreement, the Redeveloper is authorized to sublease.~~ ^{space on the Property,} as such Improvements are completed.

The Redeveloper (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the Improvements as certified by the Agency, make or create or suffer to be made or created any total or partial, sale, assignment, conveyance, ~~or sublease,~~ or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the leasehold estate in the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Authority; Provided, That prior to the issuance by the Authority of the certificate provided as to completion of construction of the Improvements, the Redeveloper may enter into any agreement to sell, sublease, or otherwise transfer, after the issuance of such certificate, the leasehold estate in the Property or any part thereof or interest therein, which agreement shall not provide for payment of or on account of the purchase price or rent for the leasehold estate in the Property, or the part thereof or the interest therein to be so transferred prior to the issuance of such certificate.

(b) The Authority shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any written approval granted pursuant to Subsection (a) of this Section that:

- (1) Any proposed transferee ~~or sublessee~~ shall have the qualifications and financial responsibility, as determined by the Agency, necessary and adequate to fulfill the obligations undertaken in the Agreement by the Redeveloper (or, in the event the transfer is of or relates to part of the leasehold estate in the Property, such obligations to the extent that they relate to such part).
- (2) Any proposed transferee ~~or sublessee~~, by instrument in writing satisfactory to the Agency and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Redeveloper under the Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event the transfer is of or relates to the leasehold estate in part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part): Provided, That the fact that any transferee of, or any other successor in interest whatsoever to, the leasehold estate in the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed in writing by the Authority) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the ^{Authority} ~~Agency~~ of or with respect to any rights or remedies or controls with respect to the leasehold estate in the Property or the construction of the Improvements; it being the intent of this, together with other provisions of the Agreement, that (to the fullest extent permitted by law and equity excepting only in the manner and to the extent specifically provided otherwise in the Agreement) no transfer of, or change with respect to, ownership in the leasehold estate in the Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from the Agreement with respect to the leasehold estate in the Property and the construction of the Improvements that the Authority would have had, had there been no such transfer or change.
- (3) There shall be submitted to the Authority for review all instruments and other legal documents involved in effecting transfer ~~or sublease~~ and, if approved by the Authority, its approval shall be indicated to the Redeveloper in writing.

(4) Any references herein to "transfer" and the like shall not include subleases of space on the Property.

no profit
from
transfer

(5) The consideration payable for the transfer or ~~assignment~~ by the transferee or ~~assignee or sublessee~~ shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper of the leasehold estate in the Property (or allocable to the part thereof or interest therein transferred) and the Improvements, if any, theretofore, made thereon by it; it being the intent of this provision to preclude assignment of the Agreement or transfer or ~~assignment~~ of the leasehold estate in the Property, ~~or any part thereof~~, for profit prior to the completion of the Improvements and to provide that in the event any such assignment, ~~assignment~~ or transfer is made (and is not canceled), the Authority shall be entitled to increase the Fee Purchase Price to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this subdivision (4), and the Annual Rent by the appropriate percentage of such increase, and such increased Annual Rent shall belong to and forthwith be paid to the Authority and the increased Fee Purchase Price shall be paid in the event the purchase option provided for in the Agreement is exercised.

(6) The Redeveloper and its transferee or ~~assignee~~ shall comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the Urban Renewal Act and the Urban Renewal Plan.

Provided, That in the absence of specific written agreement by the Agency to the contract, no such transfer or approval by the Authority thereof shall be deemed to relieve the Redeveloper, or any other party bound in any way by the Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

ARTICLE XI. NONENCUMBRANCE OF PROPERTY; RIGHTS AND DUTIES OF MORTGAGEES,
FHA AND PERSONS ACQUIRING LEASEHOLD

SEC.1101. Nonencumbrance of Property

- (a) Covenant Against Encumbrance. Except as provided for in subsection (b) of this Section, prior to the issuance by the Agency of the Certificate of Completion provided for by Section 802, hereof, the Redeveloper covenants and agrees not to engage in any financing or other transaction creating any Mortgage upon the Property or upon the Redeveloper's leasehold estate therein, and not to place upon the Property or the Redeveloper's leasehold estate therein, or suffer to be placed on the Property or the Redeveloper's leasehold estate therein, any lien or other encumbrance (other than a lien upon the said leasehold estate for current taxes, levied but not then due and payable), and not to suffer any levy or attachment to be made on the Property or on the Redeveloper's leasehold estate therein. Any such mortgage, encumbrance or lien shall be deemed a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.
- (b) Mortgage to Finance Improvements. Notwithstanding any other provisions of the Agreement, except Section 1704 hereof, the Redeveloper shall at times have the right to encumber, pledge, or convey its rights, title and interests in and to the leasehold estate in the Property, by way of Mortgage to finance the development, construction, equipment, repair, or reconstruction of any of the Improvements, or to refinance any outstanding loan or loans theretofore obtained by the Redeveloper for any such purpose. Except as provided in subsections (a) (3) and (a) (4) of Section 1102 hereof, a Mortgagee shall not become personally liable upon or under any of the provisions of the Agreement.
- (c) Subdivision of Property to Facilitate Mortgage Financing. Notwithstanding any other provisions of the Agreement, the Agency may, upon the request of the Redeveloper, subdivide the Property into such parts as the Redeveloper may advise the Agency will best facilitate mortgage financing for the construction of the Improvements. The Agency may provide for the release from the operation of the Agreement of a part or parts of the Property by permitting the Redeveloper alone to enter into a separate agreement(s) covering the lease of such part or parts of the Property, and all appropriate provisions of the Agreement shall be inserted into each separate agreement covering the lease of such part or parts of the Property: Provided, That the Annual Rent for each such part of the Property shall be determined by multiplying the fee purchase price of such part of the Property, as determined on the basis of the use for such part of the Property contemplated by the Construction Plans approved by the Agency pursuant to Section 801 hereof, by the percentage figure set forth in Section 601 hereof. ✓
- (d) Redeveloper to Furnish Names and Addresses of Mortgagees. The Redeveloper shall promptly furnish the Agency with the name and address of the mortgagee and of the holder under any mortgage executed on the Property or the Redeveloper's leasehold estate herein.

- (e) Redeveloper to Notify Agency of Other Encumbrances. The Redeveloper shall also notify the Agency promptly of any other lien or encumbrance which has been created on or attached to the Property or to the Redeveloper's leasehold estate therein whether by act of the Redeveloper or otherwise. ✓

SEC.1102 Rights and Duties of FHA and Mortgagee.

- (a) Prior to Completion of Improvements. If, prior to the issuance by the Agency of the Certificate of Completion provided for in Section 802 hereof, FHA or a Mortgagee shall acquire the leasehold estate in the Property, then, in such event, FHA or the Mortgagee, as the case may be
- (1) shall not be obligated to commence or complete the construction of the Improvements or, in any manner or form, to guarantee the commencement or completion of construction of the Improvements;
 - (2) shall not devote the Property or any part thereof to any uses other than as authorized by the Urban Renewal Plan and the Agreement;
 - (3) if the construction of the Improvements has commenced, may complete the construction of such Improvements in accordance with the Agreement, and by a date which shall be agreed to in writing by FHA or the Mortgagee, as the case may be, and the Agency.

~~here~~ Provided, That FHA or the Mortgagee, as the case may be, shall have notified the Agency in writing of its intention so to do within thirty days from the date it acquired the leasehold estate in the Property; and, by instruments in writing approved by the Agency as in conformity with the provisions of the Agreement and duly recorded by FHA or the Mortgagee, as the case may be, shall for itself and its successors and assigns, and expressly for the benefit of the Agency, have expressly assumed all of the obligations of the Redeveloper under the Agreement and agreed to be subject to all conditions and restrictions to which the Redeveloper is subject under the Agreement.

- (4) if the construction of the Improvements has not commenced, may, with the prior written approval of the Agency, commence and complete the construction of the Improvements in accordance with the Agreement and by such dates for such commencement and completion of the construction of the Improvements as shall be agreed to in writing by FHA or the Mortgagee, as the case may be, and the Agency,

Provided, That FHA or the Mortgagee, as the case may be, shall have notified the Agency of its intention so to do within thirty days from the date it acquired the leasehold estate in the Property. And provided further, That the Agency shall be entitled to require, as a condition of its prior written approval, compliance with the provisions of paragraph (2) of Section 1002 (b) hereof;

(5) may, with the prior written approval of the Agency, transfer the leasehold estate in the Property to a transferee who shall expressly assume all of the obligations of the Redeveloper under the Agreement by written instrument duly recorded: Provided, That the Agency shall be entitled to require, as a condition of its prior written approval, compliance by such transferee with the provisions of paragraphs (1) through (5), inclusive, of Section 1002 (b).

If FHA or a Mortgagee shall properly complete the Improvements relating to the Property or applicable part thereof, said FHA or mortgagee shall be entitled, upon written request made to the Agency, to a certification or certifications by the Agency to such effect in the manner provided in Section 802 of the Agreement, and any such certification shall mean and provide that any remedies or rights of the Agency under the Agreement because of the failure of the Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any default or breach with respect to the construction of the Improvements on other parts or parcels of the Property, or because of any other default in or breach of the Agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the Property to which such certification relates.

(b) After Completion of Improvements. If, after the issuance by the Agency of the Certificate of Completion provided for in Section 802 hereof, FHA or a Mortgagee shall acquire the leasehold estate in the Property, then, in such event, FHA or the Mortgagee:

(1) shall at times keep the Improvements in good and safe condition and repair, and shall, in the occupancy of all buildings constituting part of the Improvements and in the maintenance and operation of the Improvements and the Property, comply with all laws, ordinances, codes and regulations applicable thereto; and

(2) shall comply with the provisions of the Agreement.

(c) Right of Mortgagee to Transfer and Assign. Notwithstanding any other provisions of the Agreement, a Mortgagee shall have the unqualified right, without any approval or consent by the Agency, to sell, convey, assign or otherwise transfer or dispose of any or all of its rights, title and interests in and to a mortgage, including any and all claims arising thereunder or arising out of the mortgage transaction.

(d) Copy of Notice of Breach of Covenant or Default. Whenever the Agency, pursuant to the Agreement, shall deliver any notice or demand to the Redeveloper with respect to any breach of covenant or default by the Redeveloper in the obligations of the Redeveloper under the Agreement, the Agency shall, at the same time, furnish a copy of such written notice or demand to any Mortgagee at the last address of such Mortgagee as shown in the records of the Agency, and to FHA.

(e) Right of Mortgagee and FHA to Cure Breach of Covenant or Default by Redeveloper. Any Mortgagee and FHA (if any mortgage on the Property or the Redeveloper's leasehold estate therein permitted by the Agreement is insured, held or owned by FHA) shall have the right, at its option, to cure or remedy any breach of covenant or default by the Redeveloper under the Agreement. Any such Mortgagee may add the cost of so curing or remedying such breach of covenant or default to the debt secured by such mortgage and to the lien of the mortgage. In any case where FHA shall have cured or remedied any such breach of covenant or default, the Mortgagee may reimburse FHA for its costs in curing or remedying such breach of covenant or default, and add the amount thereof to the debt secured by the mortgage and to the lien of such mortgage. The rights provided for in this subsection shall likewise extend to any other party who may have acquired title to the leasehold estate in the

Property by reason of mortgage foreclosure or action in lieu thereof,
or who derives title through the holder of any such mortgage.

SEC.1103 Obligations of Persons Other Than Mortgagee or FHA Acquiring Leasehold:

Any person, corporation or other legal entity (other than a Mortgagee or FHA) acquiring any or all of the rights, title and interest of the Redeveloper in and to the leasehold estate in the Property, (i) under any judicial sale made under a mortgage permitted by the Agreement or as the result of any action or remedy provided therein, (ii) by foreclosure proceeding or action in lieu thereof, in connection with any such mortgage, or (iii) as a result of any legal process or proceedings other than eminent domain proceedings by public authority, shall thereby become liable under and be fully bound by all of the provisions of the Agreement and, with the prior written consent of the Agency, the Redeveloper may be fully or partially released from its obligations under the Agreement.

ARTICLE XII. INSURANCE; RESTORATION OR RECONSTRUCTION OF IMPROVEMENTS

SEC.1201 Types of Insurance to Be Carried by Redeveloper

(a) Fire and Extended Coverage. During the Lease Term, the Redeveloper shall keep all of the insurable property and equipment on the Property insured by fire and extended coverage insurance. Such insurance shall be ~~in amounts sufficient to comply with the co-insurance clause applicable to the location and character of such property or equipment, and, in any event,~~ in amounts not less than the fee purchase price ^{plus the Redeveloper's} ~~cost~~ ^{cost} of all improvements? (per art. 6, sec. 6.01) - (prev. \$215,000.)

All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies, and shall have attached thereto a clause making the loss payable to the Redeveloper, the Mortgagee, FHA and the Agency, as their respective interest may appear.

(b) Comprehensive General Public Liability Coverage During Construction

Period. The Redeveloper shall secure and maintain or cause to be secured and maintained in full force and effect such comprehensive general public liability insurance as will protect the Redeveloper and the Agency, their agents and employees, from any and all claims and damages for personal injuries, or death, or from damages to any property of the Agency or of the public, which may arise out of or in connection with the performance of any work or operations by the Redeveloper in, on or over the Property during the construction of the Improvements, whether said work or operations be by the Redeveloper, or his contractors or subcontractors, or by anyone directly or indirectly employed by any of them.

(c) Comprehensive General Public Liability Coverage After Construction Period

After the construction of the Improvements has been completed, the Redeveloper shall secure and maintain, or cause to be secured and maintained, in full force and effect such comprehensive general public liability insurance as the Redeveloper and the Agency may deem adequate.

(d) Effective Date. Each such insurance policy shall be written to become effective at the time the Redeveloper becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Redeveloper is subject to such risk or hazard.

(e) Blanket Policies. Nothing in this Section shall prevent the Redeveloper from effecting insurance of the kind and in the amount provided for under subsection (a) of this Section under a blanket insurance policy or policies which may cover other property and equipment owned or operated by the Redeveloper or affiliated companies as well as the

property and equipment on the Property, nor from effecting the insurance provided for in subsections (b) and (c) of this Section under a blanket policy or policies which may cover other properties owned or operated by the Redeveloper or affiliated companies:

Provided, That any such policy of blanket insurance or the kind provided for by subsection (a) of this Section shall specify therein (or the Redeveloper shall furnish the Agency with a written statement from the insurer under such policy specifying) the amount of the total insurance allocated to the Property and equipment on the Property, which amount shall be not less than the amount required by subsection (a) of this Section.

(f) Provision Covering FHA. Notwithstanding any other provision of the Agreement, if and so long as the leasehold interest of the Redeveloper in the Property is subject to a mortgage insured, reinsured or held by FHA or given to FHA in connection with a resale, or such leasehold interest is acquired and held by FHA because of a default under said mortgage, insurance policies provided for by this Section 1201 shall be in such amounts and forms, in such company or companies, against such risks or hazards and provide for application of proceeds as shall be approved by FHA.

SEC.1202. Non-Cancellation Clause. All insurance policies or agreements shall provide (to the extent such provision is obtainable) that they cannot be canceled or terminated until after at least fifteen (15) days' prior notice has been given to the Agency to the effect that such insurance policies or agreements are to be canceled or terminated at a particular time.

SEC.1203 Right of Agency to Obtain Insurance. In the event the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to the Agreement, the Agency, at its option, ^{after reasonable notice to Redeveloper,} may procure or renew such insurance, and all amounts of money paid therefor by the Agency shall be payable by the Redeveloper to the Agency with interest thereon at the rate of six percent per annum from the date the same were paid by the Agency to the date of payment thereof by the Redeveloper. The Agency shall notify the Redeveloper in writing of the date, purposes and amounts of any such payments made by it. The Agency shall not, in any event, take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Redeveloper to a Mortgagee.

SEC.1204 Non-Waiver of Redeveloper's Obligations. No acceptance or approval of any insurance policy or policies by the Agency shall relieve or release or be construed to relieve or release the Redeveloper from any liability, duty or obligation assumed by, or imposed upon it by, the provisions of the Agreement.

SEC.1205 Loss or Damage Not to Terminate Annual Rent or Agreement. Any loss or damage by fire or other casualty of or to any of the Improvements at any time shall not operate to terminate the Agreement or to relieve or discharge the Redeveloper from the payment of the Annual Rent, or from the payment of Public Charges, as the same may become due and payable, or from the performance and fulfillment of any of the Redeveloper's obligations pursuant to the Agreement.

SEC.1206 Rights of Holder of Mortgage. Any other provisions of the Agreement to the contrary notwithstanding, any mortgage permitted by the Agreement may contain provisions (i) authorizing and directing each insurance company to make payment for any loss directly to the holder of the Note secured by such mortgage, and (ii) authorizing such holder at the option of such holder, to apply the insurance proceeds either to the reduction of the Note secured by such mortgage, or to the reconstruction or repair of the Improvements destroyed or damaged.

5. 8. 20

SEC.1207 Redeveloper's Obligations With Respect to Restoration and Reconstruction.

- (a) Suspense Account for Insurance Proceeds. Whenever any of the Improvements, or any part thereof, shall have been damaged or destroyed, the Redeveloper shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claims (and any other moneys provided for the reconstruction, restoration, or repair of any such Improvements), shall, for accounting purposes, be carried in a separate suspense account. In the event that the Improvements are damaged or destroyed, the Redeveloper shall promptly give the Agency written notice of such damage or destruction, stating the date on which such damage or destruction occurred.
- (b) Election of Mortgagee. Sums of money received as payments for any loss or losses under said insurance policies, shall, if the holder of the mortgage so elects as provided for in Section 1206 hereof, be used and expended for the purpose of fully repairing or reconstructing the Improvements, or part thereof, which have been destroyed or damaged.

If there be any of such sums remaining after such repair or reconstruction has been fully completed, such remainder, with the approval of the affected Mortgagee, may be applied to the reduction of the indebtedness secured by the mortgage or retained by the Redeveloper.

(c) Right of Redeveloper Not to Repair or Reconstruct. The Redeveloper, with the approval of the Agency and the affected Mortgagee, may determine that all or any part of any such damage to or destruction of the Improvements, or part thereof, shall not be reconstructed, restored, or repaired. Upon such a determination all proceeds of insurance applicable to such improvements shall be turned over to the

Authority. *to the limits of the net purchase price application to that portion of the leased premises with no rental amount as a result being proportionately reduced.*
Commencement and Completion of Reconstruction.

SEC. 1208

(a) If Insurance Proceeds Are Used for Reconstruction. In the event the holder of the Mortgage elects to apply the insurance proceeds to the reconstruction or repair of the Improvements as provided for in Section 1206 hereof, the Redeveloper covenants and agrees to commence and complete the reconstruction or repair of such Improvements after the Agency has approved the Redeveloper's plans, drawings, specifications and construction schedule for such reconstruction or repair and, in any event, *construction shall be begun* within *6* months after issuance proceeds have been made available for such purpose, and shall be fully completed within *reasonable time* thereafter.

~~commencement.~~ The Redeveloper shall promptly furnish to the Agency a copy of the notification of said holder of the Mortgage of its election to so apply such insurance proceeds.

(b) If Insurance Proceeds Are Not Used for Reconstruction. If the holder of the Mortgage elects to apply insurance proceeds to the reduction of the Note secured by the Mortgage as provided for in Section 1206 hereof, The Redeveloper covenants and agrees to commence and complete recon-

struction or repair of the Improvements after the Agency has approved the Redeveloper's plans, drawings, specifications and construction schedule for such reconstruction or repair and, in any event, within a reasonable ^{time} after the holder of the mortgage on the leasehold estate of the Redeveloper notifies the Redeveloper of its election to apply insurance proceeds to the reduction of the note secured by the mortgage

and shall be fully completed within ^{a reasonable time} after commencement *(reasonable times to be judged in the light of Redeveloper's ability to raise funds for reconstruction or repair)*

SEC. 1209

Duration of Requirements for Reconstruction. The provisions of Section 1207

and 1208 of the Agreement are subject to the provisions of Section 1207 (c) hereof and shall apply only in the event the damage or destruction to the Improvements occurs during the period of the Urban Renewal Plan. In the event that such damage or destruction occurs thereafter, the Redeveloper shall not be required to reconstruct, restore or repair the Improvements, but, if it does not intend to do so, the Redeveloper shall so advise the Agency in writing within thirty days after the date such damage or destruction occurs, and, in such event, the Agency (by written notice of its intention so to do delivered to the Redeveloper within fifteen days after its receipt of such advice from the Redeveloper) may require that the proceeds of any claims against insurers remaining after the application of so much thereof as may be required to pay and discharge the Note secured by the Mortgage or so much remainder as may be reasonably required therefor, shall be deposited in a separate account to be used only for payment of the Annual Rent and Public Charges. ^{- for what period?} Any amount not required for such purposes shall be returned to the Redeveloper.

* from the sources described in Section 804.

ARTICLE XIII. MAINTENANCE, OWNERSHIP AND ALTERATION OF IMPROVEMENTS

- SEC. 1301. Maintenance and Operation of Improvements. The Redeveloper shall at all times keep the Improvements constructed on the Property in good and safe condition and repair and in the occupancy, maintenance and operation of such Improvements, and of the Property, shall comply with all laws, ordinances, codes and regulations applicable thereto. The Redeveloper shall provide heat and all utilities at its own expense and shall pay all water and sewer charges. *Prior to rehabilitation of parts of the Property Redeveloper shall be required only to take reasonable steps to secure the same for safety.*
- SEC. 1302. Waste. The Redeveloper shall not permit, commit or suffer waste or impairment of the Property, or the Improvements thereon, or any part thereof.
- SEC. 1303. Ownership of Improvements. During the Lease Term, title to the Improvements shall not vest in the Agency by reason of its ownership of the Property. Upon the expiration or termination of the Lease Term pursuant to the Agreement, title to the Improvements shall vest in the Agency.
- SEC. 1304. Alteration of Improvements. The Redeveloper shall not make or permit to be made any alteration of, addition to or change in the Improvements, nor demolish all or any part of the Improvements, without the prior written consent of the Agency. In requesting such consent, the Redeveloper shall submit to the Agency detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. *This Section is subject to and shall be construed in accordance with the applicable provisions of Article VIII.*

ARTICLE XIV. CONDEMNATION

- SEC. 1401. Adjustments of Annual Rent and Fee Purchase Price.
- (a) If Entire Property Is Taken. In the event the Property in its entirety and the Improvements, if any, shall be acquired under the exercise of the right of eminent domain at any time during the Lease Term, the Annual Rent and the Public Charges shall be prorated and paid by the Redeveloper to the effective date of such acquisition, and on such effective date the Agreement and the Lease Term shall fully terminate.

(b) If Part of Property Is Taken. In the event that a part of the Property and of the Improvements, if any, shall be acquired under the exercise of the right of eminent domain, then the Annual Rent and the Public Charges for the part of the Property so acquired shall be prorated and paid by the Redeveloper to the effective date of such acquisition and, as of the effective date of such acquisition, the Annual Rent and the Fee Purchase Price shall be reduced in direct proportion to the ratio of the area of the part of the Property so acquired to the total area of the Property: Provided, That if such reduced Annual Rent and/or Fee Purchase Price are deemed grossly inadequate or excessive by the Agency and the Redeveloper, taking into account the equities existing at the time of such acquisition of part of the Property including, without limiting the generality of the foregoing language, the rentals being realized by the Redeveloper from Improvements located on the part of the Property so acquired, the Annual Rent and/or the Fee Purchase Price may be reduced to such other amount or amounts as may be agreed upon in writing by the Agency and the Redeveloper and approved in writing by the FHA in the event the leasehold estate in the Property is subject to a mortgage insured or held by FHA.

SEC. 1402. Proration of Condemnation Awards. In the event the Property, or part thereof, and the Improvements thereon, if any, shall be acquired under the exercise of the right of eminent domain at any time during the Lease Term, the Redeveloper shall be entitled to, and there shall be paid to the Redeveloper in addition to all other amounts under Section 1401 hereof, the portion of the award allocable to the value of the Improvements so acquired: Provided, That nothing in this Section shall affect the rights of the Mortgagee or FHA regarding such award and, if a mortgage on the leasehold estate in the property insured by FHA so provides, payment may be made to the Mortgagee directly rather than to the Redeveloper.

SEC. 1403. Disposition of Interests of Agency and Redeveloper on Condemnation or Negotiated Sale in Lieu Thereof.

(a) In the event the Property in its entirety or in part and/or the Improvements in their entirety or in part shall be acquired under the exercise of the right of eminent domain at any time during the Lease Term, the interests of the Agency and the Redeveloper shall be dealt with according to law, except as otherwise specifically provided in Sections 1401 and 1402 hereof.

(b) In the event of a negotiated sale of all or a portion of the Property in lieu of condemnation, the proceeds shall be distributed and Annual Rent reduced as provided in cases of condemnation, but the approval of the FHA and any affected Mortgagee shall be required as to the amount and division of the payment to be received: Provided, That in the event there are then outstanding bonds or other similar long-term obligations issued by the Agency to finance the capital value of the Property, the approval of two-thirds of the holders of such outstanding bonds shall also be required as to the amount and division of the payment to be received.

ARTICLE XI RIGHTS OF REDEVELOPER, MORTGAGEE AND FHA TO PURCHASE PROPERTY

SEC. 1501 Redeveloper's Option to Purchase the Property.

✓ option purchase

(a) Period for Exercise. Subject to the conditions hereinafter set forth in this Section, at any time after the execution of this lease agreement ~~with the~~ *as extended,* and *until the* termination of the Lease Term, ~~whichever is sooner of~~, the Redeveloper (except as to the rights of FHA or the Mortgagee as provided for in Sections 1502 and 1503 hereof) shall have the exclusive and sole right to purchase from the Agency, expressly subject to the rights of FHA and the Mortgagee pursuant to Sections 1502 and 1503 hereof, the fee simple title to the Property on any parcel thereof, free and clear of all reservations, encumbrances and exceptions other than (i) those to which the leasehold estate created by the Agreement was subject at the commencement of the Lease Term; (ii) such liens or other encumbrances as may have been caused or created by the Redeveloper or its representatives; (iii) any mortgage of the said leasehold estate; (iv) any liens for unpaid taxes and public charges on the Property incurred or levied for a fiscal or tax period during the lease term; (v) applicable building and zoning laws, codes, ordinances and regulations and other local and State laws and regulations and the controls of the Urban Renewal Plan; or (vi) such other liens or encumbrances as may be waived or accepted by the Redeveloper.

(b) Conditions for Exercise. In the event that there are then outstanding preliminary loan notes, temporary loan notes or other similar short-term obligations issued by the Agency to finance the capital value of the Property, the Redeveloper, in order to purchase from the Agency the said fee simple title to the Property, shall comply with the following conditions:

✓

- (1) give to the Agency, not less than one hundred eighty days prior to the maturity date of such notes or obligations, written notice of its intention so to do;
- (2) pay to the Agency, not less than ninety days prior to the maturity date of such notes or obligations, the Fee Purchase Price of, in cash or by certified check; and
- (3) agree, in writing, that the delivery by the Agency of the deed, hereinafter provided for, conveying the fee simple title to the Property shall not be made prior to the date the Payment required by the preceding paragraph is made to the Agency.

purchase
price

In the event that there are then outstanding bonds or other similar long-term obligations issued by the Agency to finance the capital value of the Property, then, in such event, the Redeveloper, in order to purchase from the Agency the said fee simple title to the Property, shall comply with the following conditions:

- (1) give to the Agency, not less than one hundred and fifty (150) days prior to the next succeeding semi-annual date (hereinafter referred to as the "Payment Date") for the payment of interest on such bonds or obligations on which, in accordance with the terms of such bonds or obligations, the Agency may call and redeem the same, written notice of its intention so to do;
- (2) on the date of the delivery by the Agency of the deed conveying the fee simple title to the Property or on the date which is fifteen (15) days prior to the latest date on which the Agency is required to publish its first notice in order to call and redeem such bonds or obligations, whichever of such dates shall first occur, pay to the Agency (in cash or by certified check)--
 - (A) The Fee Purchase Price if the same is equal to or in excess

- 45
- of the sum (hereinafter referred to as the "Required Sum") of--
- (i) The aggregate principal amount of such bonds or obligations outstanding on the date of the delivery of said deed,
 - (ii) the aggregate amount of all accrued interest and interest which will accrue on such bonds or obligations from and including the date of the delivery of said deed to the next succeeding date on which all bonds or obligations then outstanding may be called and redeemed by the Agency in accordance with the terms of such bonds or obligations which date is herein termed the "Call Date," and
 - (iii) the aggregate amount of all premiums, paying agent fees or other payments, if any, which must be paid by the Agency in order to call and redeem such bonds or obligations on the Call Date, or
- (B) if the Fee Purchase Price is less than the Required Sum, the Fee Purchase Price plus an amount equal to the difference between the Required Sum and the Fee Purchase Price; and
- (3) agree, in writing, with the Agency that the delivery by the Agency of the deed, hereinafter provided for, conveying the fee simple title to the Property shall not be made prior to the date the payment required by the preceding paragraph is made to the Agency.
- (c) Form of Deed. The Agency shall convey to the Redeveloper, by quitclaim deed 11, such fee simple title (expressly subject to the rights of FHA and of the Mortgagee pursuant to Sections 1502 and 1503 of this Agreement), and upon such conveyance the obligation of the Redeveloper to pay to the Agency the Annual Rent shall terminate. The said deed shall contain covenants running with the land substantially in conformance with those set forth in Section 901, 902 and 903 hereof.
- (d) Other Sale of Fee. After the expiration of the option period of the

Redeveloper provided for in Section 1501 (a) hereof and during the Lease Term, the Agency shall not convey the fee simple title to the Property to any person other than the Redeveloper (except FHA pursuant to Section 1503 hereof) unless the Agency shall have notified the Redeveloper in writing of the offer of such other person to purchase such fee simple title, and the Redeveloper, within thirty days from the date of its receipt of such notification, shall not have exercised its right, hereby granted, to purchase such fee simple title upon the same terms as the offer of such other person: Provided, That in no event shall the purchase price accepted by the Agency from the Redeveloper pursuant to this subsection be less than the higher of the following amounts: (1) the payment required to be made to the Agency pursuant to the second sentence of subsection (b) of this Section or (2) the then fair market value of the Property at the time of such offer as determined by the Agency.

(e) Purchasing Option of Redeveloper Not Exercisable during Default Period.

During the period of the continuance of a failure by the Redeveloper to perform any covenant or provision of the Agreement and notwithstanding that the Agency has not served notice of such failure on the Redeveloper, the Redeveloper shall not be entitled to exercise the rights and privileges granted to it by this Section 1501.

(f) Deed Is Determination of Non-Default; Proration of Annual Rent; Non-Merger of Leasehold with Fee.

The delivery by the Agency to the Redeveloper pursuant to this Section of the deed conveying fee simple title to the Property shall constitute a conclusive and incontestable determination by the Agency that there did not exist as of the date of such conveyance any breach upon the part of the Redeveloper of the covenants contained in the Agreement or any default on the part of the Redeveloper under any provision of the Agreement, and such deed shall

so recite. In the event that the Redeveloper shall exercise the
 to purchase the Property pursuant to this Section, the Annual Rent
 shall be prorated and paid by the Redeveloper to the date of delivery
 by the Agency to the Redeveloper of the deed conveying fee simple title
 to the Property. The Redeveloper further agrees that the deed conveying
 fee simple title to the Property to the Redeveloper pursuant to this
 Section shall provide that such title is subject to the leasehold
 estate in the Property created by the Agreement and to any outstanding
 mortgage on such leasehold estate, and that, so long as such mortgage
 insured, held or owned by FHA, said leasehold estate of the Redeveloper
 shall not be merged with the fee simple title thereby conveyed without
 the prior written approval of FHA.

SEC. 1502 Right of Mortgagee to Purchase the Property. Notwithstanding any other
 provision of the Agreement, if a Mortgagee shall acquire the leasehold
 estate of the Redeveloper in the Property, the said Mortgagee shall be
 entitled to exercise the Purchase options provided for in Section 1501
 hereof by complying with all terms and conditions of said Section 1501.

SEC. 1503 Right of FHA to Purchase the Property.

(a) Period for, and Conditions of, Exercise. Notwithstanding any other
 provisions of the Agreement, if and so long as the leasehold estate
 in the Property is subject to a mortgage insured, reinsured, or held
 by FHA or given to FHA in connection with a resale or because of a
 default under said mortgage, FHA shall have the option to purchase
 good and marketable fee title to the Property free and clear of all
 liens and encumbrances except such as may be waived or accepted by
 FHA, provided Annual Rent, additional Annual Rent and other costs
 and expenses chargeable to the Redeveloper are paid to date of transfer
 of title. The option provided for by this Section 1503 may be exercised
 upon compliance with all applicable conditions of subsection (b) of

Section 1503 and upon payment of the consideration for conveyance of title in cash or by Treasury check: Provided, That the Agency or other person or corporation who may then be the owner of the title to the Property is given at least sixty days prior written notice of FHA's intention to exercise the option to purchase provided for by this Section 1503. Upon compliance by FHA with the conditions precedent thereto, the Agency or other owner of the fee title to the Property shall execute and deliver to FHA naming, as grantee, the Secretary of Housing and Urban Development, his successors and assigns, a deed of conveyance to the Property containing a covenant against the grantor's acts, but excepting therefrom such acts of the Redeveloper and those claiming by, through or under the Redeveloper. The said deed of conveyance shall also contain the covenants referred to in subsection (c) of Section 1501 hereof and, if the option to purchase provided for by this Section 1503 is exercised prior to issuance of the Certificate of Completion provided for by Section 802 hereof, the said deed of conveyance shall also contain such additional covenants as may be required to incorporate in the said deed all applicable provisions of subsection (a) of Section 1102 hereof. Nothing in the option to purchase provided for by this Section 1503 shall require the Agency to pay any Public Charges which were due and payable by the Redeveloper.

- (b) Obligation of Owner, Other than Agency, to Convey. If, at the time FHA exercises its option to purchase provided for by this Section 1503 the Property is owned by any person or entity other than the Agency, said person or entity shall comply with the provisions of subsection (a) of this Section 1503. In this regard, it is expressly understood and agreed that the right of FHA to purchase the fee is, and is to remain, prior and paramount in FHA in the event that it becomes owner

of the leasehold estate in the Property, or the holder of any mortgage thereon, and that it may exercise such right without regard to who may be the owner of the Property at the time and notwithstanding the fact that a Mortgagee may have previously exercised its right under the Agreement to purchase the Property.

ARTICLE XVI DEFAULT

SEC. 1601 Rights and Remedies on Default.

(a) Definition of Default. In the event that the Agency or the Redeveloper shall for any reason, other than the occurrence of circumstances over which the Agency or the Redeveloper, respectively, can exercise no effective control, fail to perform any of the terms, covenants, conditions or provisions of the Agreement, and such failure shall not be cured or remedied within ninety(90) after the date the Agency or the Redeveloper receives from the other notice *specifying such failure or* ~~such failure within such ninety days period~~ within such longer period as shall be reasonable under the circumstances and as shall be specified in such notice to the Agency or the Redeveloper then such failure shall thereafter, until cured or remedied, constitute a default under the Agreement.

(b) Rights and Remedies. In addition to any other rights and remedies which they may have at law or in equity, upon the occurrence of a default, then, so long as such default continues:

(1) The Agency or the Redeveloper, as the case may be, shall, to the full extent permitted by law, have each of the following rights and remedies:

(i) the right to a writ of mandamus or an injunction or other similar relief against the Agency (including any or all of

directors and its officers, agents or representatives); and
(ii) the right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default:

(2) the Agency shall also have the right to have a receiver appointed by a court of competent jurisdiction to take possession and control of the Redeveloper's interest in the Property, with power in such receiver, on behalf of the Redeveloper, so long as shall be necessary or proper to prevent the recurrence of such default:

(i) to administer, carry on, manage, operate, maintain, complete and otherwise deal with the Redeveloper's interest in the Property in accordance with applicable law and the Agreement and any other contracts by the Redeveloper pertaining to such interests in the Property;

(ii) to collect, receive, safeguard, expend and otherwise deal with, handle or apply, in accordance with applicable law and the Agreement and any other contracts by the Redeveloper pertaining to the Redeveloper's interest in the Property, all funds available and becoming available to the Redeveloper for or in connection with the operation and maintenance of such interest in the Property, including payments, when due, of the principal of and the interest on any outstanding loans in respect to such interest in the Property;

(iii) to do and perform any and all such other acts and things as, consistent with the Redeveloper's obligations with respect to the matters hereinbefore mentioned in this Section, the court may deem necessary or proper.

(c) Subsequent Default. The Agency and the Redeveloper shall have the same rights and remedies provided for in the preceding subsection upon the occurrence of each default.

(d) No Termination for Certain Defaults. Notwithstanding any other provision of the Agreement, neither the Agency nor the Redeveloper shall be entitled to terminate the Agreement and the Lease Term by reason of any default hereunder except for such as, under and pursuant to Article XVII hereof, the Agency or the Redeveloper, respectively, is entitled to terminate the Agreement and the Lease Term.

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SEC. 1602 Obligations, Rights and Remedies Cumulative. The respective obligations of the Agency and the Redeveloper, pursuant to the Agreement, shall be cumulative, and the reference to any such obligation shall not be construed as a limitation on any other obligations. The respective rights and remedies of the Agency and the Redeveloper whether provided by the Agreement or by law, shall be cumulative, and (except as otherwise specifically provided by the Agreement) the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise, at the same or at different times, of any other such rights or remedies for the same default, or for the same failure in respect to any of the terms, covenants, conditions or provisions of the Agreement or of any of its remedies for any other default or breach by the other party.

SEC. 1603 Non-Action on Failure to Observe Provisions of Agreement. In the event that either party to the Agreement shall not take any action in respect of any failure of the other party to observe or perform any of the terms, covenants, conditions, or provisions of the Agreement required to be observed, performed or kept by such party, or in respect of any default under the Agreement by the other party (whether before or after any suit or judgment has been filed or obtained against such other party), the same shall not be construed as a waiver of such failure or default in respect of the term,

no waiver

covenant, condition or provision of the Agreement not being observed, performed or kept, or of the Agreement as an entirety. It is understood and agreed that any delay by either party to the Agreement in exercising or asserting any of its rights or remedies hereunder, or in instituting any actions or proceedings to assert or enforce any such rights or remedies, shall not operate as a waiver of any such rights or remedies or to deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies, it being the intent of this provision that neither such party (in order to avoid the risk of being deprived or limited in the exercise of such right or remedy, or in its right to institute and maintain any such action or proceeding to protect, assert or enforce any such right or remedy, because of concepts of waiver, laches or otherwise) should be constrained to exercise such right or remedy or its right to institute and maintain any such actions or proceedings at a time when it may desire otherwise to resolve any problem created by the failure of the other party to observe, perform or keep the terms, covenants, conditions or provisions of the Agreement required to be observed or performed by such other party.

SEC. 1604 Non-Performance Due to Causes Beyond Control of Parties. In the event performance of any of their respective covenants, agreements or obligations under the Agreement by the Agency or the Redeveloper is prevented, interrupted or delayed by causes beyond its control, including but not restricted to strike, riot, storm, flood, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, epidemics, quarantine restrictions, freight embargoes and unusually severe weather, or delays of subcontractors due to such causes, and not caused by any act or failure to act by the party thereby delayed in such performance, the date or time or times for the performance of such covenant, agreement or obligation by

the Agency or the Redeveloper shall be extended for a period of time equal to the number of days the performance of such covenant, agreement or obligation by the Agency or the Redeveloper is so prevented, interrupted or delayed and, in such case, neither the Agency nor the Redeveloper shall be liable for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by the Agency or the Redeveloper in connection with, or, as the result of, any such delay in, or non-performance of, such covenant, agreement or obligation. In the event that the Agency or the Redeveloper intends to avail itself of the provisions of this Section, the Agency or the Redeveloper shall give written notice of such intent to the other; such notice to be given in not to exceed fifteen days from the date performance of such covenant, agreement or obligation was so prevented, interrupted, or delayed.

ARTICLE XVII. TERMINATION

SEC. 1701. Termination.

(a) Termination for Breach of Covenant. In the event that the Redeveloper shall fail to keep, perform and observe any of its covenants contained in

- (1) Section 901(a) hereof as to the use of the Property during the period of the Urban Renewal Plan
- (2) Section 601 hereof as to the payment of the Annual Rent;
- (3) Section 701 hereof as to the payment of Public Charges;
- (4) Section 801 hereof as to its submission to the Agency of Construction Plans or Corrected Construction Plans;
- (5) Section ^{4?}805 hereof as to the commencement and completion of the construction of the Improvements;
- (6) Section 901(b) hereof against discrimination on the basis of race, creed, color or national origin;
- (7) Section 1208 hereof as to the commencement and completion of the reconstruction or repair of destroyed or damaged Improvements;
- (8) Section ¹⁰⁰¹~~1002~~ hereof against changes in the entity of the Redeveloper from its present charitable form.
- (9) Section 1003 hereof against making or suffering to be made any sale, lease, assignment or other transfer or disposition of the leasehold estate in the Property or of the Redeveloper's rights and interests under the Agreement; or
- (10) Section 1101(a) hereof against engaging in any financing (except as permitted by the terms of the Agreement) or other transaction creating any mortgage on the Property, placing or suffering to be placed thereon any lien or other encumbrance, or suffering any levy or attachment to be made thereon;

and any such failure or violation shall not be cured or remedied within ~~thirty~~^{ninety} days after the date the Redeveloper receives notice from the Agency of such failure or violation (or, if it is not practicable to cure or remedy such failure or violation within such sixty day period, within such longer period as shall be reasonable under the circumstances and as shall be specified by the Agency in such notice); then, in such event, the Agency may, at its option and in addition to any other remedy provided for in the Agreement, terminate the Agreement, by written notice to the Redeveloper of its intention so to do.

Upon any failure or violation hereunder which authorizes the termination of the Agreement by the Agency, the Agency shall give notice to the Mortgagee and FHA, and the Mortgagee, FHA, and their successors and assigns, shall have the right within any time within six months from the date of such notice to correct the failure or violation and reinstate the Agreement unless the Agency has first terminated the Agreement as provided herein.

At any time after ~~thirty~~^{ninety} days from the date a notice of such failure or violation is given to the Mortgagee and FHA, the Agency may elect to terminate the Agreement and acquire possession of the Property. Upon acquiring possession of the Property, the Agency shall notify FHA and the Mortgagee. The Mortgagee and FHA shall have six months from the date of such notice to elect to take a new lease on the Property. Such new lease shall have a term equal to the unexpired portion of the Lease Term and shall be on the same terms and conditions, except that the Mortgagee's and FHA's liability for ground rent shall not extend beyond their occupancy under such new lease. The Agency shall tender such new lease to the Mortgagee or FHA within thirty days after a request for such lease and shall deliver possession of the property immediately

upon execution of the new lease. Upon executing a new lease the Mortgagee or FHA shall pay to the Agency any unpaid Annual Rent or other charges due or that would have become due under the Agreement to the date of the execution of the new lease, including any taxes which were liens on the leasehold estate of the Redeveloper and which were paid by the Agency, less any net rentals or other income which the Agency may have received on account of the leasehold estate of the Redeveloper in the property since the date of default under the Agreement.

(b) Mutual Rights to Terminate on Failure to Give Possession of Property to Redeveloper.

In the event that the Agency is unable to give the Redeveloper possession of the Property in the manner and condition and by the date upon which the Lease Term was to commence as provided in the Agreement; and any such failure shall not be cured within thirty days from the said date, the Redeveloper or the Agency may terminate the Agreement by giving to the other party one hundred and twenty days' written notice of its intention so to do: Provided, That such notice shall not terminate the Agreement if such failure is cured prior to the expiration of the notice period. Upon termination of the Agreement pursuant to this subsection,

neither the Agency nor the Redeveloper shall have any further rights against or liability to the other under this lease.

() Rights on Termination. If this Agreement is terminated by the Agency pursuant to Section 1701(a) hereof, such termination shall not relieve or release the Redeveloper from any obligation incurred pursuant to this Agreement in respect of the Property prior to the date of such termination.

C. 1702. Surrender of Property. Upon the expiration of the Lease Term hereunder pursuant to Section 501, or upon termination of the Agreement and the Lease Term hereunder in respect to the Property pursuant to this Article XVII, it shall be lawful for the Agency to re-enter and repossess the Property and the Improvements thereon without process of law, and the Redeveloper, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Property and the Improvements thereon peaceably to the Agency immediately upon such expiration or termination in good order, condition and repair being at least the order and repair in which the same were acquired ^{or} such improved condition as they were put thereafter, except for reasonable wear and tear.

. 1703. Ownership of Improvements on Termination. Upon the termination of the Agreement pursuant to this Article ~~XXX~~^{XVII}, title to all Improvements on the Property shall vest in the Agency, subject to any outstanding mortgage on the lease-

hold estate in the Property, and while such mortgage is outstanding, merger of the leasehold estate subject thereto with the fee title of the Agency shall not take place.

EC. 1704. Effect of Default or Breach of Covenant on Certain Rights of Redeveloper.

During the period of the continuance of a failure by the Redeveloper to perform or observe any covenant and agreement listed in Section 1701(a)

hereof, and notwithstanding that the Agency may not have served upon the Redeveloper written notice of such failure, and during the period of the existence of a default as provided for in Section 1601 hereof, the Redeveloper shall not be entitled to exercise the rights and privileges granted to it by Section. and 1101(b) hereof. In connection with any proposed mortgage of the Property by the Redeveloper pursuant to the Agreement, or any proposed transfer of the leasehold interest in the Property by the Redeveloper pursuant to the Agreement, if no such failure or default on the part of the Redeveloper then exists, the Agency, upon written request of the Redeveloper, shall promptly certify, in such form as may be appropriate for recordation, to the Redeveloper that no such failure or default then exists, and such certification shall constitute a conclusive and incontestable determination that there does not exist any such failure or default upon the part of the Redeveloper under the Agreement.

EC. 1705. Party in Position of Surety With Respect to Obligations. The Redeveloper, for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modifi-

ARTICLE XVIII. MISCELLANEOUS

EC. 1801. Conflict of Interests; Agency Representatives Not Individually Liable. No member, official, or employee of the Agency shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Agency shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of the Agreement.

EC. 1802. Equal Employment Opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Improvements provided for in the Agreement:

- (a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Redeveloper will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: 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. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.
- (b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified

- applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Redeveloper's books, records, and accounts by the Agency, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Redeveloper's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Redeveloper may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise

provided by law.

(g) The Redeveloper will include the provisions of Paragraphs (a) through (g) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the Agency or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Redeveloper becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Agency or the Department of Housing and Urban Development, the Redeveloper may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read - "During the performance of this Contract, the Contractor agrees as follows:", and the term "Redeveloper" shall be changed to "Contractor".

C. 1803. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

C. 1804. Waivers. Any right or remedy which the Agency or the Redeveloper may have under the Agreement, or any provision of the Agreement, may be waived in writing by the Agency or the Redeveloper without the execution of a new or

supplemental agreement. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition of its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations of the other party.

C. 1805. Approvals. Whenever, under the Agreement, approvals, authorizations, satisfactions, or waivers are authorized or required, such approvals, authorizations, satisfactions, or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the Agency or the Redeveloper and delivered to the party to whom it is directed at the address of such party specified pursuant to Section 1806 hereof. Where any approval is required by the terms of the Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld, Where, pursuant to the Agreement, any document of or proposed action by the Redeveloper is submitted by it to the Agency, and the Redeveloper has been notified in writing by the Agency that the same is approved or is satisfactory, such determination shall be deemed to be a final determination by the Agency with respect to such particular document or proposed action for all purposes. Where by the terms of this Agreement the Redeveloper is required to obtain the approval of the Agency as a condition to the exercise by the Redeveloper of its right to take any action in respect to the Property, if the Agency, or a successor public body or officer designated by or pursuant to law and having authority by or pursuant to law to grant such required approval, shall not be in existence, the Redeveloper, any other provisions of the Agreement to the contrary notwithstanding, shall not be required to obtain any such approval.

- C. 1806. Notices and Demands to Agency and Redeveloper. Any notice or demand given under this Agreement by the Agency, the Redeveloper, a Mortgagee, or FHA shall be in writing, and signed by a duly authorized officer of the Agency, or the Redeveloper, the Mortgagee or FHA and delivered to the party to whom it is directed at the address of such party specified pursuant to Section 12 of Part I hereof. Any such notice or demand shall be deemed to have been given on the date it shall have been received at the office of the party to whom it is directed. * (Addresses of parties)
- C. 1807. Recordation Cost of Federal Revenue Stamps. This Agreement, and any modifications thereof or additions thereto, shall be duly recorded by the Redeveloper among the land records for the place in which the Project area is situated and the costs of such recordation and the costs of any and all Federal revenue stamps which legally must be attached to any of said papers shall be paid by the Redeveloper.
- C. 1808. Amendments. This Agreement may be amended by written document, duly executed by the parties hereto, evidencing the mutual agreement of the parties hereto such amendment.
- C. 1809. Provisions of Law Deemed Included. Each and every provision of law and clause required by law to be included in the Agreement shall be deemed to be included herein, and the Agreement shall be read, construed and enforced as though the same were included herein. If, through mistake, inadvertence or otherwise, any such provision or clause is not included herein or is incorrectly included herein, then, upon application of either party hereto, the Agreement shall forthwith be amended to include the same or to correct the inclusions of the same.
- C. 1810. How Agreement Affected by Provisions Held Invalid. If any provision of the Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and of the Urban Renewal Plan.

The address of Lessor is 539 Tremont Street, Boston, Massachusetts with a copy to
 Elliot M. Surkin, Esquire, Hill & Barlow, 225 Franklin Street, Boston, Massachusetts 02110.
 The address of the Redeveloper is 1100 Beacon Street, Boston, Massachusetts

IN WITNESS WHEREOF, on the 9th day of August 1973, at Boston, Massachusetts, the parties hereto have caused this Agreement to be signed, sealed and delivered by their duly authorized officers, respectively.

Signed, sealed and delivered in the presence of:

John D. Kehely

BOSTON REDEVELOPMENT AUTHORITY

Robert T. Kenney
ROBERT T. KENNEY
DIRECTOR

John D. Kehely

BOSTON CENTER FOR THE ARTS, INC.

By Elliot M. Surkin
ELLIOT M. SURKIN, CHAIRMAN
BOARD OF DIRECTORS

Approved as to form:

John C. Conley
JOHN C. CONLEY
GENERAL COUNSEL

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

, 1973

On this day of , 1973, before me appeared
Robert T. Kenney, Director of the Boston Redevelopment Authority who being
by me duly sworn, acknowledged the foregoing Lease Agreement to be the free
act and deed of said corporation.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

, 1973

On this day of , 1973, before me appeared
Elliot M. Surkin, Chairman of the Board of Directors of the Boston Center
for the Arts, Inc. who being by me duly sworn, acknowledged the foregoing
Lease Agreement to be the free act and deed of said Corporation.

Notary Public
My commission expires:

Schedule "A"

The preliminary description of the leased premises is as follows:

Such area is generally bounded by Warren Avenue on the North; Tremont Street on the South; Berkeley on the East; and Union Park and the westerly sideline of Clarendon Street and the northerly sideline of Montgomery Street on the West excluding the property known as the National Theatre.

This description shall be subject to the preparation of a final and more complete description.