

Request for City Council Committee Action from the Department of Community Planning and Economic Development – CPED

Date: October 20, 2009

To: Council Member Lisa Goodman, Chair, Community Development Committee

Referral to: Council Member Paul Ostrow, Chair of Ways & Means

Subject: Approvals for the Minnesota Shubert Performing Arts & Education Center

Recommendation:

1. Approve a two-month extension to the Redevelopment Agreement and Promissory Note and authorize proper City officials to execute the amendments and all related documents
2. With respect to a \$11,000,000 grant from the State of Minnesota:
 - a. Adopt the attached resolution establishing the governmental program to be achieved through construction and operation of the Minnesota Shubert Performing Arts & Education Center
 - b. Accept the \$11,000,000 grant for the Minnesota Shubert Performing Arts & Education Center project
 - c. Authorize the appropriate City officials to execute:
 - i. A grant agreement with the State of Minnesota
 - ii. A use/lease agreement with Minnesota Shubert Theater LLC
 - iii. A ground lease with Shubert Landholding LLC
 - iv. A master disbursement agreement with title company and other funders
 - v. Such other documents necessary to implement the project, all in accordance with the terms herein
 - d. Amend the 2009 General Appropriation Resolution to increase the appropriation in Fund 01600-8900320 (state grants and loan programs) by \$11,000,000
3. Authorize City officials to execute a grant agreement with Minnesota Shubert Theater LLC for \$2,000,000 in Community Development Block Grant-Recovery Act funding
4. Authorize City officials to execute a Memorandum of Agreement with the Minnesota State Historic Preservation Office and Artspace Projects Inc. or an affiliate regarding mitigation of impacts to historic elements

Previous Directives: August 21, 1998 Redevelopment, Lease and Option Agreements with Artspace Projects, Inc. providing for the move of the Shubert Theater from Block E, including approval of terms of sale at 516 Hennepin Avenue to Artspace Projects, Inc. August 25, 2000 extension of Lease and Option Agreement to October 31, 2003. October 10, 2003 extension of Lease and Option Agreement to October 31, 2005. October 11, 2005 extension of Lease and Option Agreement to October 31, 2007. June 6, 2006 approval of DEED Grant Agreement, Design Sub-Grant Agreement with Artspace Projects, Inc and Guaranty Agreement with Artspace, and amendment to Redevelopment and Option Agreement with Artspace Projects, Inc. November 7, 2007 extension of DEED Grant Agreement to June 30, 2008 and extension of Redevelopment Agreement and related Promissory Note to October 31, 2008. January 27, 2009 extension of Redevelopment Agreement and related Promissory Note to October 31, 2009. June 2, 2009 approval of Community Development Block Grant-Recovery Act funding recommendations.

Prepared by: Miles Mercer, Senior Project Coordinator 673-5043 Approved by: Charles T. Lutz, Deputy CPED Director_____ Catherine A. Polasky, Economic Policy & Development Director_____ Presenters in Committee: Miles Mercer

Financial Impact

Payment of \$212,540 to the City per the Promissory Note for acquisition-related costs
Action is within the Business Plan

Community Impact

Neighborhood Notification: The Downtown Minneapolis Neighborhood Association has tracked the project and contributed Neighborhood Revitalization Program funding to it

City Goals: Enriched Environment for Arts, A Premier Destination

Sustainability Targets: The Minnesota Shubert Center will ensure the preservation and re-use of the historic Shubert Theater and incorporate green building elements in the rehabilitation at a transit and pedestrian-accessible location.

Comprehensive Plan: The property is located within the formally designated Entertainment District as specified in the Minneapolis 2010 Plan and the newly-adopted *Minneapolis Plan for Sustainable Growth*. The Minnesota Shubert Center will contribute to the arts and entertainment offered within the district. Also in the *Minneapolis Plan for Sustainable Growth*, the Shubert is within a designated Activity Center and Transit Station Area. The future land use designation is Mixed Use.

Zoning Code: The Minnesota Shubert Center is a permitted use in the B4S-2 district.

Living Wage/Business Subsidy Agreement: This project is not subject to the State Business Subsidy Act since the project does not qualify as a business subsidy recipient nor the City Living Wage Ordinance since this is a historic preservation project.

Job Linkage: under discussion

Supporting Information

In 1999, the City moved the historic Shubert Theater from Block E to 516 and 508 Hennepin Avenue to prevent the Theater's demolition. Artspace Projects Inc. ("Artspace") had agreed to acquire and renovate the Theater. Since that time, Artspace has developed a design and construction plan, raised the necessary funds, and secured relevant approvals to create the Minnesota Shubert Performing Arts & Education Center ("Minnesota Shubert Center").

The Minnesota Shubert Center project consists of: 1) rehabilitating the Shubert Theater; 2) reconstructing a stage house behind the Theater; and 3) constructing a new Great Hall building between the Theater and the adjacent Hennepin Center for the Arts building that will integrate the two. In addition, Artspace intends to make certain improvements to the Hennepin Center for the Arts building, including upgrades to the lobby given the connection with the Great Hall, with private fundraising dollars and an expected federal Save America's Treasures grant.

Total project cost, since 1999 through the project closing, is approximately \$40 million (see Sources and Uses table below). Miller Dunwiddie Architects has completed construction documents and McGough Construction has taken the plans out to bid.

The Heritage Preservation Commission approved the plans at its December 16, 2008 meeting. The City Planning Commission approved the plans at its March 23, 2009 meeting.

Project Sources & Uses of Funds*			
<u>Sources</u>		<u>Uses</u>	
State construction grant	\$11,000,000	Acquisition	\$2,930,000
State design grant	\$1,000,000	Design	\$3,401,000
City of Minneapolis	\$4,650,000	Construction	\$24,841,000
Federal CDBG-R	\$2,000,000	Overhead & Admin.	\$3,670,000
New Markets Tax Credits	\$2,800,000	Fundraising	\$3,403,000
Corporate	\$2,790,000	Finance Costs	\$995,000
Foundation	\$5,630,000	Consultants	\$890,000
Individual	\$8,360,000		
Bank Qualified Bonds	\$1,900,000		
Total	\$40,130,000	Total	\$40,130,000

**Figures subject to finalization at project closing*

Redevelopment Agreement

The Redevelopment Agreement and its accompanying Promissory Note from Artspace to the City need to be amended. Currently there is an October 31, 2009 deadline for Artspace to commence construction and make a final payment to the City for the purchase of the site. The project will miss that deadline by a matter of weeks. To conform the documents to the current schedule, staff recommends extending the

construction commencement deadline in the Redevelopment Agreement and the maturity date of the accompanying Promissory Note to December 31, 2009.

The amendment will also incorporate not only the standard City contracting provisions regarding affirmative action plans, preconstruction booklet, SUBP goals, apprenticeship requirements and prevailing wages, but also a workforce employment plan with additional goals for employment and training of women, minorities, and Minneapolis residents.

The Promissory Note allows Artspace to earn credits of \$300,000 against part of the amount owed for every \$2,500,000 achieved in project fundraising. To date, Artspace has raised over \$18,000,000 for the Minnesota Shubert Center project from corporate, foundation, and individual supporters, not counting other public sources. This performance allows for \$1,240,000 of the Promissory Note amount to be credited. The \$212,540 amount that remains is not subject to credits, and Artspace will pay such amount to the City at closing.

State Grant

The Minnesota Shubert Center project will receive an \$11 million construction grant from State of Minnesota bonding funds, in addition to a \$1 million design grant from the State already spent. The State awarded the \$11 million grant to the City to establish and maintain a performing arts and education center for the purposes of public arts education and dance, music, and other performances and other related and ancillary functions, also known as the “governmental program.” The attached resolution formally establishes the governmental program to be achieved by the City as recipient of the State grant and outlines the statutory authority under which the City will undertake this project.

To receive the grant funds, the City will enter into a grant agreement with the State administered by the Department of Employment and Economic Development (DEED), in accordance with the terms outlined in Exhibit A. The State grant funds mandate that the City must take an ownership interest in the property. This will take the form of a ground lease with the property owner, Shubert Landholding LLC, an affiliate of Artspace, as outlined in Exhibit B. The grant funds, along with other funding, will be used to complete the rehabilitation and construction of the Minnesota Shubert Center project.

It should be noted that, as with all projects funded by a State grant of general obligation bond proceeds, the City will have certain obligations as the public recipient of the grant. This includes being responsible for monitoring the construction of the project and assuring there are sufficient funds available for the completion. Staff has reviewed the proposed financing plan, and Minnesota Shubert Theater LLC will be required to supply at closing all funds needed to fully fund the project. Payment and performance bonds and insurance will also be required to mitigate construction period risks and disbursements will be made by a title company that will collect lien waivers and track the balance of sources against uses of funds.

The City will enter into a use/lease agreement, as outlined in Exhibit C, with an affiliate of Artspace called Minnesota Shubert Theater LLC (the “Operator”) to operate the

Minnesota Shubert Center as a center for the performing arts and education. The Operator will pay all operating costs and must submit for the City's approval annual summaries of the previous year's program, revenues and expenses, and proposed future budgets and programs to assure that the project is financially stable and is meeting the intended public purposes. City staff has reviewed the Operator's initial projections of operating revenues and expenses to verify that the project appears financially viable.

In the event that the Operator was not able to operate the governmental program at the Minnesota Shubert Center and went into default under the use/lease agreement, the City would have some risks related to the on-going operation of the performing arts and education center to comply with the grant agreement. These risks would include a responsibility to work with the Operator and a consultant to seek ways to cure operational problems and interim property management costs after the use/lease agreement was terminated. The City could elect to seek an alternate operator, but it would have to repay Minnesota Shubert Theater LLC its investment. If the City eventually were to find that the project is no longer needed or usable for the program, the City could seek the State's permission to sell its leasehold interests, with sales proceeds to be distributed as outlined in Exhibit C.

Community Development Block Grant-Recovery Act (CDBG-R)

In June 2009, the City designated \$2,000,000 for the construction of the Minnesota Shubert Center project from the City's allocation of federal Community Development Block Grant funding made available by the American Recovery and Reinvestment Act (the "Recovery Act"). The City's designation was accepted by the US Department of Housing and Urban Development (HUD), the administering agency of CDBG-R funding, in July 2009.

The City will enter into a grant agreement with Minnesota Shubert Theater LLC. The agreement will contain the requirements associated with this federal funding source, including the jobs benefits to low and moderate income residents, Davis Bacon wages for construction, and Recovery Act provisions such as Buy American, audit/inspection rights, whistleblower protections and reporting requirements.

State Historic Preservation Office

As a recipient of federal CDBG-R funds, the Minnesota Shubert Center project is subject to a HUD Part 58 environmental review process, including a Section 106 review of historic resources, whereby the City conducts an environmental review as HUD's local agent. Currently, the City staff review of the project is undergoing the required 30-day comment period by public agencies. Since both the Shubert Theater and the Hennepin Center for the Arts building are on the National Register of Historic Places, the review has involved consultation with the Minnesota State Historic Preservation Office (SHPO) on the design plans for the project.

The rehabilitation of the buildings will follow the US Secretary of Interior's Standards for the Treatment of Historic Properties except for one aspect. Due to structural, building

code, performance, and financial issues, the design plan calls for the removal of the two balconies, defining features for the interior's historic character. Note that the Minneapolis Heritage Preservation Commission (HPC) approved this plan in December 2008; however, the review authority of the HPC only extends to consideration of any adverse effects to the *local* landmark designation status of the Theater. For federal purposes, SHPO finds that the removal of these balconies constitutes an "adverse effect" to the historic character of the Theater. As such, the project must take actions to mitigate the impact per federal requirements.

These mitigating actions will be documented in a Memorandum of Agreement (MOA) among the City, SHPO and Artspace or an affiliate. These actions are expected to include preparing photographic documentation of the building, installation of an interpretive exhibit on the history of the Shubert Theater, commissioning an interpretive performance on the history of the Shubert Theater, and preparing a comparative article on the Shubert Theaters in Minneapolis and Saint Paul. These are actions that Artspace will undertake in consultation with the City and SHPO. A further description of these actions is outlined in Exhibit D. Performance and completion of the MOA will permit the City to make a finding of no significant impact in its HUD environmental review.

RESOLUTION
of the
CITY OF MINNEAPOLIS

By _____

Establishing the governmental program to be achieved through construction and operation of Minnesota Shubert Performing Arts and Education Center in Minneapolis.

WHEREAS, the City of Minneapolis (the “City”) has adopted the *Downtown 2010* plan, and one of the goals set forth in *Downtown 2010* is to strengthen downtown’s role as the region’s center for arts, entertainment and culture; and

WHEREAS, the City’s Comprehensive Plan includes policies supporting an Entertainment District in Downtown (Policy 4.16.3) and supporting development of Downtown Minneapolis as a unique retail, arts, and cultural destination (Policy 4.16.5); and

WHEREAS, the City’s Comprehensive Plan also includes policies supporting arts and culture as a resource for economic development (Policy 9.1), increasing resources for arts and culture (Policy 9.3), promoting collaborations among arts and cultural organizations, artists, the City, and other partners (Policy 9.6), and promoting arts education opportunities for Minneapolis youth and adults; and

WHEREAS, Artspace Projects Inc. (“Artspace”) is one of the unique amenities and arts institutions that Minneapolis desires to retain, enhance, support and promote; and

WHEREAS, Artspace has selected the historic Shubert Theater on downtown Hennepin Avenue for an expanded performing arts and education center that will achieve the goals of *Downtown 2010* and the City’s goals; and

WHEREAS, Artspace has an award-winning distance learning program to expose students from around the state to arts education and the new Minnesota Shubert Center will provide enhanced physical facilities for these educational programs; and

WHEREAS, the proposed Minnesota Shubert Center is expected to generate significant economic benefits in the form of direct and indirect construction spending, construction and permanent jobs, and direct and indirect spending by patrons of the institution; and

WHEREAS, Minnesota Statutes, section 469.012, authorizes the City to own, hold and improve real estate within its area of operation and to lease real and/or personal property, and Minnesota Statutes, section 469.155 authorizes the City to acquire, construct, hold and finance projects; and

WHEREAS, Minnesota Laws 2006, Chapter 258, Section 21, Subdivision 17(b), and Minn. Stat. §§471.191 specifically authorize the City to acquire an ownership interest in the Minnesota Shubert Center, to undertake the design, construction, furnishing and equipping of the Minnesota Shubert Center; to establish and maintain a program of public arts education and dance, music, and other performances at the Minnesota Shubert Center; and to enter into a lease or management agreement for operation of the Minnesota Shubert Center; and

WHEREAS, the State of Minnesota has approved a \$11,000,000 grant to the City to construct, furnish and equip the Minnesota Shubert Center; and

WHEREAS, to satisfy conditions of the State grant, the City must own or ground lease the Minnesota Shubert Center, but may enter into a use/lease agreement with the Minnesota Shubert

Theater LLC under which it will take on responsibility for the operation of the performing arts and education institution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

1. **THAT** the construction, ownership and operation of a Minnesota Shubert Center on downtown Hennepin Avenue will achieve the important public goals of the City identified above.

2. **BE IT FURTHER RESOLVED THAT** the acquisition, construction, ownership, financing, lease and operation of the Minnesota Shubert Center are within the City's authority under Minnesota Statutes, sections 469.001-047, 469.155 and 471.15-471.191, and Minnesota Laws 2006, Chapter 258, Section 21, Subdivision 17(b).

3. **BE IT FURTHER RESOLVED THAT** the governmental program to be achieved by the City's sponsorship of the Minnesota Shubert Center will be to establish and maintain a performing arts and education center for the purposes of public arts education and dance, music, and other performances and other related and ancillary functions, pursuant to which the City expects to support cultural participation and arts education and to encourage economic development.

4. **BE IT FURTHER RESOLVED THAT** the City hereby accepts the grant of \$11,000,000 from the State of Minnesota and authorizes the appropriate City officials to execute a grant agreement with the State of Minnesota, a ground lease with Shubert Landholding LLC, a use/lease agreement with Minnesota Shubert Theater LLC, a master disbursement agreement with the State of Minnesota, Minnesota Shubert Theater LLC, and others, and such other documents as necessary to implement the project.

5. **BE IT FURTHER RESOLVED THAT** the City Council delegates to the CPED Director the authority to approve and certify to the State of Minnesota, with copy to the City Council, the annual reports from Minnesota Shubert Theater LLC pursuant to the grant agreement and the use/lease agreement, provided the CPED Director finds that a) the forecast revenues for the current fiscal year and the next three fiscal years equal or exceed the forecast expenses, and b) the facility continues to achieve the governmental program as evidence by the fact that at least half of the earned revenue is being generated by the production or presentation of dance, music and other performances and the operation of educational programs.

6. **BE IT FURTHER RESOLVED THAT** this resolution shall be in full force and effect from and after its passage.

EXHIBIT A

Summary of Terms

State of Minnesota Construction Grant to City for Minnesota Shubert Center Project

Subject to approval by State

Parties:

State Entity – Minnesota Department of Employment and Economic Development

Public Entity – City of Minneapolis

Amount – \$11,000,000 (The State may increase or decrease the grant amount if the legislature increases or decreases the approved appropriation.)

Use – Construction, equipping and furnishing of the historic Shubert Theater and associated atrium (the “Project”) for use as a performing arts and educational center for the purposes of public arts education and dance, music, and other performances and other related and ancillary functions (the “Governmental Program”).

Public Ownership – To satisfy the public ownership requirement, the City will acquire a ground lease interest in the real property and facility for a term that is at least 125% of the useful life of the Project and otherwise meets state requirements.

Termination –Although the grant agreement would allow a longer timeframe, the Project must start no later than December 31, 2009 per the Redevelopment Contract, as amended. All funds must be disbursed within four years after the construction commencement date, or the grant agreement will terminate (unless mutually extended). The grant agreement also will terminate at the end of the City’s ground lease and upon a sale of the Project approved by the State.

Compliance with state laws and requirements – The City will comply with (and/or cause Minnesota Shubert Theater LLC to comply with) all requirements necessitated by State laws and the State constitution, including:

- Repayment of the disbursed grant amount to the State in the event of an uncured event of default.
- Adherence with general obligation bond requirements to assure that interest on the State bonds remains exempt from taxes.
- The facility must be insured.
- A declaration must be filed in the real estate records against the City’s ground lease interest in the real property and facility to put others on notice of the State’s interest in the Project.
- If the City determines that the facility is no longer needed or usable for the Governmental Program and the Commissioner of the Minnesota Office of Management and Budget consents, the Project may be sold. It must be sold for “fair market value,” and (unless the G.O Compliance Legislation no longer applies to the Project) the net proceeds after sale-related costs will be used to repay the State grant and the State will also share in any residual after other obligations (i.e., outstanding debt and a payment to Minnesota Shubert Theater LLC for the underlying fee title as provided in the ground lease) are repaid in proportion to its contribution compared to the matching funds contribution.

Use/lease agreement – The City may enter into a use/lease agreement with Minnesota Shubert Theater LLC to operate the Governmental Program in the Project, subject to State approval of the use/lease agreement and compliance with State requirements, including the requirement that the initial term not exceed 50% of the useful life of the facility (see Exhibit C).

Design review – The City must submit (or cause Minnesota Shubert Theater LLC to submit) the facility predesign plans and a program plan and cost estimates for State review in accordance with its standard requirements.

Matching funds – The City will document (or cause Minnesota Shubert Theater LLC to document) that no less than \$11,000,000 in matching funds from non-State sources is committed and available for the Minnesota Shubert Center. The City also will document or cause Minnesota Shubert to document that all resources needed to fully fund the land acquisition and completion of the improvements will be available at closing.

Disbursements – To be made in accordance with the following and the terms of a Master Disbursement Agreement.

- **Draws** – State funds will be disbursed pro rata with matching funds through a title company on a draw by draw basis.
- **Project Costs** – All costs to construct, install, furnish and equip the Minnesota Shubert Center.
- **Documentation prior to disbursement** – Funds to be disbursed upon submission of appropriate documentation, including project completion status, lien waivers and sufficiency of remaining funds.
- **Filing of Declaration** – No State funds will be disbursed until the declaration is filed against the City's ground lease interest in the real property and facility.
- **Reimbursement proportions** – State funds may only be used for qualified capital expenditures that are incurred on or after August 1, 2006.

Other provisions – The agreement will provide for retainage and other security (including payment and performance bonds) to assure completion of the Project.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not adversely impact the City's rights, obligations or interests.

EXHIBIT B

Summary of Terms Ground Lease between Artspace Projects and City

Subject to approval by State

Parties:

Ground Lessor – Shubert Landholding LLC, an affiliate of Artspace Projects Inc.
Ground Lessee – City of Minneapolis

Premises – The real property underlying the Shubert Theater and associated atrium and the improvements constructed or to be constructed thereon during the term. No prior mortgages.

Permitted use – The Premises may be used as a performing arts and education center for public arts education and dance, music and other performances and related and ancillary uses.

Term – 51 years and 7 months, which equals or exceeds 125% of the useful life of the Improvements, commencing on the date of execution, and which cannot be prematurely cancelled without the prior approval of the Minnesota Department of Employment and Economic Development.

Rent – \$0 per year, with pass through to Minnesota Shubert Theater LLC of responsibility for all operating, maintenance, taxes, insurance and other costs pursuant to the Use Agreement to be executed simultaneously with the Ground Lease.

Conditions – The City's obligations under the Ground Lease are contingent upon: concurrent execution of the Construction Grant Agreement by the State and the Use Agreement by Shubert Landholding LLC; Commissioner of the Minnesota Office of Management and Budget approval of such agreements; receipt of a title insurance commitment acceptable to City (with insurance premium to be paid by Shubert Landholding LLC).

Indemnity – Shubert Landholding LLC will agree to indemnify, defend and hold harmless the City from any actions, proceedings or claims, of whatsoever nature, including attorney's fees, arising out of the condition, ownership, use, or operation of the Premises.

Title to improvements - Upon expiration of the Ground Lease (e.g., at the end of the term), the City and State interests in the Premises will terminate and the City shall immediately quit and surrender possession of the Premises to Shubert Landholding LLC in its then condition.

Sale or assignment – The City shall not assign or sublet its interest in the Ground Lease or the Premises without the prior written consent of Shubert Landholding LLC and the Commissioner of the Minnesota Office of Management and Budget.

Limitation – There will be no personal liability on the part of City, or its officers, directors, members, employees and agents, to Shubert Landholding LLC with respect to any of the terms, covenants and conditions of the Ground Lease.

Sale upon discontinuance of Governmental Program – If the Use Agreement with Minnesota Shubert Theater LLC is terminated prior to the end of the term or not renewed and the City has decided the Premises are no longer needed for the Governmental Program, then the City must first offer to sell (with State approval) the City's interest in the Premises to Shubert Landholding LLC. If Shubert Landholding LLC elects not to purchase the City's interest, then it will convey fee title to the Premises to the purchaser of the City's ground lease interest in the Premises. In either case, the sale proceeds, after deducting City's sale-related costs, will be applied in the following order: State grant, any outstanding approved debt, the cumulative capital investment of Shubert Landholding LLC and Minnesota Shubert Theater LLC,

and proportional distribution of any excess proceeds. . If the City's interim property management costs cannot be deducted from the sale proceeds, then Shubert Landholding LLC shall pay them

Purchase Option upon continuance of Governmental Program—If the Use Agreement is terminated or not renewed and the City has decided to continue the Governmental Program in the Premises, then the City may elect to purchase Shubert Landholding LLC's fee title and ground lease interest for fair market value and, regardless of whether or not the City purchases the Premises, it must reimburse Shubert Landholding LLC and Minnesota Shubert Theater LLC for their investment in the Premises.

Other provisions – Minnesota Shubert Theater LLC through the Use Agreement will:

- Comply with laws;
- Pay taxes, if any;
- Maintain and insure the Premises; and
- Consent to a leasehold mortgage.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not adversely impact the City's rights, obligations or interests.

EXHIBIT C

Summary of Terms Use Agreement between City and Minnesota Shubert Theater LLC

Subject to approval by State

Parties:

Landlord– City of Minneapolis

Tenant– Minnesota Shubert Theater LLC, an affiliate of Artspace Projects Inc.

Governmental Program – The City will lease the Premises to Tenant to construct the improvements by June 30, 2011 and operate the “Governmental Program,” which is a performing arts and education center for public arts education and dance, music and other performances that includes studios, classrooms, and a performance hall, together with education programming, other cultural performances, and related and ancillary uses in the City of Minneapolis, pursuant to which the City expects to support cultural participation and arts education and to encourage economic development. Minnesota Laws 2005, Chapter 20, Section 23, Subdivision 15(c) and Laws 2006, Chapter 258, Section 21, Subdivision 17(b), specifically provides the City the necessary authority to undertake the program.

Premises – The City’s ground lease interests in the property, plus the improvements constructed or to be constructed thereon.

Term – The Use Agreement between the City and Tenant has to be for a term substantially less than the useful life of the buildings leased. Accordingly, the Use Agreement will have an initial term of 20-22 years, depending on whether it starts upon execution or completion.

Renewals – Two renewal terms. The first renewal term will be for 20 years, and the second renewal term will equal the shorter of 10 years or the end of the ground lease term. As a condition precedent to each renewal, the Minneapolis City Council shall have determined that Tenant has demonstrated that such renewal continues to carry out the Governmental Program and that Tenant is suited and able to perform the functions contained in the Use Agreement and upon such demonstration the City shall act in good faith to renew the Use Agreement.

Rent - \$0 per year, with Tenant responsible for all operating, maintenance and other costs, including any taxes or special assessments.

Initial Improvements and Funding – Tenant will build the improvements in accordance with the Redevelopment Contract and provide the resources to meet the \$11 million State match requirement, fully fund the improvements at closing and secure repayment of the 501(c)(3) tax exempt revenue bonds. The City will provide the State grant funds to Tenant to cover the appropriate share of the Project cost.

Reporting and oversight – Tenant must:

- Submit the predesign plans and a program plan and cost estimates for State review in accordance with its standard requirements and make any changes needed for approval.
- After the facility is completed, submit annual reports: a) of major activities at the facility, including attendance at performances and the number of people served by the educational programs, and how they serve the Governmental Program, b) the annual program budget for the current fiscal year showing that forecast revenues equal or exceed forecast expenses, and c) projected program budgets for the next three fiscal years showing that forecast revenues will equal or exceed forecast expenses. The CPED Director will approve the submittal upon finding that: a) Tenant is continuing to carry out the Governmental Program, and b) the projected revenues will support the projected expenses. The City will not have artistic control over the performing arts and education programs.
- Maintain books and records.

Permitted uses – The Premises may be used as a performing arts and education center for public arts education and dance, music and other performances, and related and ancillary uses, pursuant to which the City expects to support cultural participation and arts education and to encourage economic development.

Financing – Tenant may encumber its leasehold interests in the Premises with a subordinate mortgage.

Future potential sale –The Use Agreement has the same sale and purchase option provisions as the Ground Lease (see Exhibit B) in the event of early termination or nonrenewal of the Use Agreement.

Default under State grant agreement – In the event that a default under the Use Agreement results in the City being in default under the State grant agreement, the City may impose upon Tenant any remedy imposed upon the City by the State.

Statutory Termination – If the Governmental Program is terminated or changed due to changes in state law in such a way as to cause the Use Agreement and the operation of the Center to be inconsistent with the changed Governmental Program, then the Use Agreement may, at the City's option, be terminated by 485 days written notice. Any termination will be deemed automatically rescinded if within such 485 days (i) the State law requiring the Governmental Program to be terminated or changed is repealed or modified appropriately, or (ii) Tenant conforms its operation of the Center to the changed Governmental Program.

Other provisions –Tenant:

- Cannot sublet without the City's consent.
- May make additional improvements or modifications to the Premises without the City's approval, as long as said improvements or modifications don't reduce the Project's value or the ability to achieve the Governmental Program.
- Must maintain and insure the Premises and restore them in the event of damage.
- Must indemnify the City against liability for Tenant's actions in building, maintaining and operating the facility on the Premises.
- Must list its job openings with the State of Minnesota for one year.
- Must comply with any other requirements imposed by the State.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not adversely impact the City's rights, obligations or interests.

EXHIBIT D

Summary of Proposed Terms Agreement among City, Minnesota State Historic Preservation Office, and Artspace Projects Inc. or an affiliate

Subject to approval by SHPO

1. Some photographic documentation was prepared for the Shubert Theater before the building was moved. The photographs and negatives have not been properly labeled or packaged and do not have an index. There are two negatives and two prints of some views, but only one negative and one print of others.

To complete the documentation, additional large-format (4"x5") archival photographs shall be taken of the building in its new location. Both exterior and interior views shall be included. All of these photographs and the earlier photographs shall be combined into a single photographic documentation set with an index to photographs. The negatives and contact prints shall be labeled and placed in archival sleeves or on archival mount cards, as appropriate. The documentation set shall meet the standards of the Minnesota Historic Property Record. The original documentation set and a digital copy shall be submitted to, and accepted by, the SHPO before the commencement of any project work.

Artspace shall keep any duplicate negatives and contact prints, which shall be labeled and packaged to match comparable negatives and prints in the full documentation set. Artspace shall also retain a photocopied copy and digital copy of the documentation.

Artspace shall submit additional photocopied sets of the documentation to:

- The City of Minneapolis Office of Grants and Special Projects;
- The Minneapolis Heritage Preservation Commission;
- The Minneapolis History Collection at the Hennepin County Central Library (Minneapolis);
- The Northwest Architectural Archives at University of Minnesota's Elmer L. Andersen Library; and
- The Hennepin History Museum.

2. The project plans shall be reviewed and approved by the City and SHPO prior to construction.

3. Artspace shall include an interpretive exhibit on the history of the Shubert Theater in the Project. The exhibit shall incorporate historic plans and photographs of the building; and shall include all periods of the building's history, from the time of its construction through the 2010 rehabilitation. This exhibit shall be developed in consultation with the City and SHPO, and the final exhibit design shall be reviewed and approved by the City and SHPO.

4. Artspace shall commission and present an interpretive performance about the history of the Shubert Theater. The content, medium, intended audience and other details shall be developed in consultation with the City and SHPO.

5. The City and Artspace shall be responsible for preparing an illustrated, 500- to 750-word article comparing issues (e.g., physical, programmatic, economic) involved in rehabilitating the Shubert Theaters in Minneapolis and Saint Paul. The article is intended to provide practical insights to individuals and groups interested in rehabilitating historic theaters. The City and Artspace shall pursue publication of the article in a periodical with national circulation such as *Preservation*, *APT Bulletin*, *American Theatre*, or *Stage Directions*. If it seems unlikely that a national periodical will publish the article, statewide publications shall be pursued (e.g., *Minnesota Preservationist*, *Minnesota History*).

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not adversely impact the City's rights, obligations or interests.