

CITY CLERK  
OFFICIAL COPY

LOAN AGREEMENT

05-262

THIS LOAN AGREEMENT, in two Parts, Part I and Part II, is made and entered into this 29<sup>th</sup> day of April, 2005, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("Lender" or "City"), and ST. CHARLES TOWN COMPANY, LLC, a Colorado limited liability company, whose address is 730 17<sup>th</sup> Street, Suite 200, Denver, Colorado, 80203 ("Borrower" or "Contractor").

**WITNESSETH:**

**WHEREAS**, the City is acting pursuant to federal grant conditions with respect to making Neighborhood Business Revitalization (NBR) Loans to selected business entities within a designated target area; and

**WHEREAS**, the Borrower is an eligible borrower pursuant to the provisions of the NBR-CDBG Loan Program and is ready, willing, and able to meet the conditions of the Program; and

**WHEREAS**, the Borrower is willing to pledge assets owned by it to secure repayment of such funds;

**NOW, THEREFORE**, in consideration of the premises and mutual agreements herein contained, the parties agree as follows:

1. **LOAN TO BORROWER**: Subject to the terms of this Agreement, the City then agrees to lend Borrower the sum of Four Hundred Seventy-five Thousand Dollars (\$475,000.00), to be repaid over a term of approximately ten years with interest at the rate of three percent (3%) per annum. Such principal and interest shall be due and payable, at such place as may be designated by City, in monthly installments of \$2,634.34, commencing upon the first day of the thirteenth (13th) month from the month of execution of a promissory note in form satisfactory to City evidencing this loan (the "Promissory Note"), and due upon the first day of each month thereafter, with the entire unpaid balance of principal and accrued interest due and payable in a balloon payment on or before the first (1st) day of the one hundred twenty-first (121st) month from the month of execution of the Promissory Note. Interest shall commence accruing on the first day of the twelfth (12th) month following the month of execution of the Promissory Note.

2. **SECURITY FOR REPAYMENT**: Repayment of this loan will be secured by a first

deed of trust (the "Deed of Trust"), in form satisfactory to the City, against property known and numbered as 2526 East Colfax Avenue and 1454-1480 Columbine Street, Denver, Colorado (the "Property").

3. **SUBORDINATION/ADDITIONAL DOCUMENTS:** The Director of the City's Office of Economic Development ("OED") or his/her designee is authorized to execute documents necessary to subordinate the liens of the City's Deed of Trust so long as (i) such documents are in form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust are deemed by the OED Director to be reasonable and necessary, and in said Director's opinion, the City remains adequately secured; and (iii) Borrower is not then in default of its obligations hereunder. Provided these conditions are met, the Director or his designee is further authorized to execute documents reasonably required to condominiumize the Property, including, without limitation, (i) a lender's consent to a condominium declaration and map, and (ii) a partial release of the City's deed of trust, such that it will encumber only that portion of the Property owned by Borrower.

4. **USE AND DISBURSEMENT OF FUNDS:** Loan proceeds will be used to acquire the Property. Funds will be disbursed upon receipt of documentation satisfactory to the fiscal department of the City's Division of Housing and Neighborhood Development ("HND"), in accordance with the following budget:

Acquisition	\$ 475,000.00
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Acquisition funds will be disbursed at a scheduled closing, payable jointly to Borrower and the title company handling the closing on the acquisition of the Property.

These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan.

5. **DEADLINE FOR DISBURSEMENT OF FUNDS:** Borrower agrees that all conditions required hereunder for closing shall be met on or before a date ninety days following the date of this Agreement, or the Agreement shall then terminate. Borrower further agrees that documentation for all draw down requests will be submitted no later than thirty days after loan closing. These deadlines may be extended with the written approval of OED.

6. **JOB CREATION AND RETENTION:** Borrower agrees to create ten (10) new permanent full time jobs with funds received under this Agreement. Borrower agrees to make not less than fifty-one percent (51%) of these jobs available to low and moderate income persons as

defined by the U.S. Department of Housing and Urban Development. Borrower agrees to provide training for any jobs requiring special skills that can only be acquired with substantial training or work experience or jobs which require education beyond high school. A listing by job title of the total permanent jobs to be created is attached and incorporated as Exhibit A. Borrower agrees to create these jobs by the 24th month from the date of the City's loan closing. Failure to meet this deadline, unless extended in writing by OED, will constitute default under the Article entitled "DEFAULT AND ACCELERATION", hereinbelow.

Borrower agrees to submit a written plan, to be approved by OED, describing the actions to be taken to ensure that low and moderate income persons receive first consideration for jobs.

Borrower agrees to file required reports with the City concerning recruitment and training of low and moderate income job applicants, including a listing by job title of the permanent jobs filled; which jobs were available to low and moderate income persons; and a description of how first consideration was given to low and moderate income persons. The description shall include what hiring process was used; which low and moderate income persons were hired. For each low and moderate income person hired, Borrower agrees to provide the size and annual income of the person's family prior to the person being hired for the job, and the person's gender and racial/ethnic status.

7. **ENVIRONMENTAL AND HISTORIC CLEARANCE:** No loan proceeds may be obligated or spent until Borrower has received written environmental and historic clearance from the Housing and Neighborhood Development Division. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project. The Borrower covenants that it shall not allow any hazardous substances to be above, in, on, or under the Property, and that it shall not generate, use, have, manage or release or allow the generation, use, presence, management or release of any hazardous substance above, in, on, under or from the Property. Borrower shall be solely responsible for, and shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous substances on, under or about the Property.

8. **DEFAULT AND ACCELERATION:** Borrower expressly agrees that the refusal or inability of the Borrower to make the payments called for to the City, or any other default or breach

of this Loan Agreement or of the Promissory Note or Deed of Trust, shall constitute a default. The City may also declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan proves to have been false in any material respect when made or furnished. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower set out in this Agreement which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the secured property, and to enforce its rights under its security documents. Borrower agrees to pay a late charge of five percent of any monthly installment not received on or before the 15th day after the installment is due. Upon default, the principal shall accrue interest at the rate of fifteen percent per annum.

9. **EXPENSES**: The Borrower agrees to pay all direct costs, expenses, and attorney fees reasonably incurred by the City in connection with the Borrower's breach or default of this Loan Agreement or of the Promissory Note or Deed of Trust. The Borrower agrees to pay reasonable costs associated with the loan closing, including but not limited to the costs of a mortgagee's title policy in form satisfactory to City insuring the priority of the City's Deed of Trust.

10. **INSECURITY**: The Borrower agrees that should the City deem the loan hereunder to be insecure, in accordance with this Agreement or with the Borrower's Promissory Note including, but not limited to, the voluntary or involuntary dissolution or cessation of business by the Borrower, the filing of a petition in bankruptcy or an assignment for the benefit of creditors, the breach of any condition of the Block Grant Agreements set out below, or the breach of any loan agreement or security agreement to any other lenders on the project, then such insecurity shall be deemed a default under the Article entitled "DEFAULT AND ACCELERATION", hereinabove, and the entire amount of the loan shall be immediately due and payable, notwithstanding the Borrower's full compliance with all payment obligations under this Agreement, the Promissory Note or Deed of Trust.

11. **EXAMINATION OF RECORDS**: The Borrower agrees that the Comptroller General of the United States, the U.S. Department of Housing and Urban Development, the City or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Borrower involving transactions related to this Agreement.

12. **CONDITIONS:** This Loan Agreement is subject to the Housing and Community Development Act of 1974, as amended, regulations issued by the U.S. Department of Housing and Urban Development, 24 C.F.R. 570 et seq., and the Community Development Block Grant Agreements entered into between the City and HUD. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. The obligation of the City to lend the above sums shall only extend to payment of monies appropriated for this Agreement by the United States of America and paid into the Treasury of the City and County of Denver as an applicable cost under the terms of the Grant Agreements referred to above.

This Agreement is also subject to the terms and conditions set forth in Part II, attached and incorporated by reference.

13. **NO ASSIGNMENT:** The Borrower shall not assign its interest in this Agreement except upon prior written consent of the City.

14. **INSURANCE:** Borrower or its contractor(s) shall procure and maintain insurance in the following types and amounts:

A. Where loan proceeds are disbursed for construction, Builders Risk Insurance in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as loss payee.

B. Commercial General Liability Insurance covering all operations by or on behalf of Borrower, on an occurrence basis against claims for personal injury, bodily injury, death, and property damage (including loss of use). Said coverage shall be at least as broad as that provided by ISO form CG 0001 or its equivalent, cover contractual liability and have limits not less than \$1,000,000.00 per occurrence/\$2,000,000.00 general aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor.

C. Worker's Compensation Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

D. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the Deed of Trust, with the City named as loss payee.

E. Certificates of Insurance evidencing the above shall be submitted to the OED prior

to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

15. **INDEMNITY**: The Borrower shall defend, indemnify and save harmless the City, its officers, agents, and employees, from any and all claims, demands, suits, actions or proceedings of any kind or nature, in any way resulting from or arising out of this Agreement, including without limitation operations of contractors and acts or omissions of employees or agents of the Borrower; provided, however, that the Borrower need not indemnify or save harmless the City, its officers, agents, and employees from damages resulting from the sole negligence of the City's officers, agents, and employees.

Insurance coverage specified constitutes the minimum requirements, and these requirements do not lessen or limit the liability of the Borrower under this Agreement. The Borrower shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary.

16. **WAIVER**: No waiver of any breach or default under this Agreement shall be held to be a waiver of any other or later breach or default. All remedies afforded in this Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

17. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

18. **BINDING EFFECT**: This Agreement shall be binding upon the parties and shall inure to the benefit of their respective successors, assigns, representatives, and heirs.

19. **COMMERCIAL TRANSACTION**: Borrower agrees and warrants that this Agreement and the obligations created herein constitute a commercial transaction and is not a consumer obligation or consumer related loan or obligation.

20. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION,**

**INELIGIBILITY AND VOLUNTARY EXCLUSION:** By its signature below, the Contractor assures and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Contractor is unable to certify any of the statements in the certification form, the Contractor shall provide a written explanation to the City before the execution of this Agreement by the Contractor. The Contractor shall provide immediate written notice to the Director if at any time it learns that its certification under this paragraph was erroneous when submitted or has become erroneous by reason of changed circumstances.

The Contractor agrees that by executing the Agreement, it shall not knowingly enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

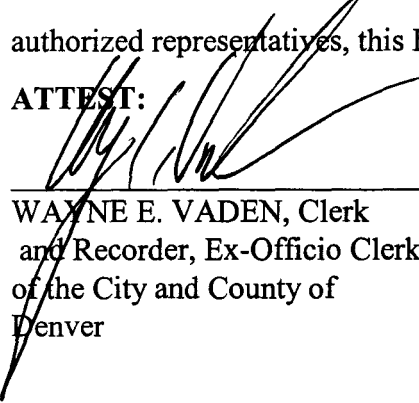
The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, the City may pursue any and all available remedies available to the City including but not limited to terminating this Agreement immediately upon written notice to Contractor.

Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification, as such clause is set forth in the above described federal regulations, in all lower tier, covered transactions associated with this Agreement. Contractor is encouraged to consult the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain type of Federal financial and nonfinancial assistance and benefits. The Lists are maintained by the U.S. General Services Administration (GSA) for the use of Federal programs and activities. The Excluded Parties List System (EPLS) is the electronic version of the Lists and its Internet address is believed to be presently located at [www.epls.gov](http://www.epls.gov). The reference contained in this subparagraph to consult the Lists is intended solely to assist Contractor in meeting its obligations under federal law and under this agreement. The City makes no express or implied guarantees of any kind concerning the Lists or any other information

provided by the federal government with respect to these purposes. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Order 12549 and its implementing regulations.

IN WITNESS WHEREOF, the parties have executed through their respective authorized representatives, this Loan Agreement as of the day and year first above written.

ATTEST:

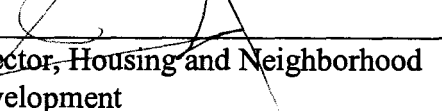
  
WAYNE E. VADEN, Clerk  
and Recorder, Ex-Officio Clerk  
of the City and County of  
Denver



CITY AND COUNTY OF DENVER

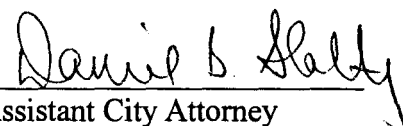
  
Mayor

RECOMMENDED AND APPROVED:

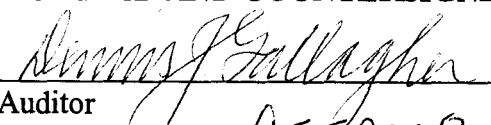
By   
Director, Housing and Neighborhood  
Development

APPROVED AS TO FORM:

COLE FINEGAN, Attorney  
for the City and County of Denver

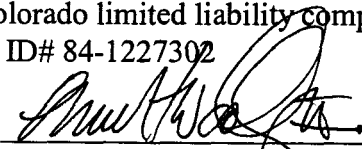
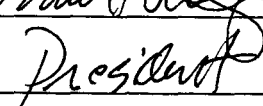
By   
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By   
Auditor  
Contract Control No. GE5A008

"CITY"

ST. CHARLES TOWN COMPANY, LLC,  
a Colorado limited liability company  
Tax ID# 84-1227302

By:   
Title: 

"BORROWER"



**EXHIBIT A**

**HIRING**

**POSITIONS**

**POSITION TITLE/DESCRIPTION**

**WAGE**  
**RATE**  
**per**  
**Hour**

**HOURS/**  
**WEEK**

10	18 months	Movie Employees	\$8.00 - \$12.00	40
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**PART II**  
**SUPPLEMENTARY GENERAL CONDITIONS (CDBG)**

**ARTICLE I**  
**FEDERAL REQUIREMENTS**

The following conditions take precedence over any conflicting conditions in the Agreement.

**Sec. 100.     Definitions.** As used in this Agreement:

A.     "City" means City and County of Denver or a person authorized to act on its behalf.

B.     "Contractor" means a person or entity who has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. "Subcontractor" means any person or entity who enters into an agreement or contract with a Contractor.

C.     "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

D.     "Construction contract or agreement" means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

**Sec. 101.     Housing and Community Development Act of 1974.** This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 CFR 570 et seq., and 24 CFR 85 et seq.

**Sec. 102.     Uniform Administrative Requirements.** This Agreement is subject to the requirements of U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 CFR Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

**Sec. 103.     Nondiscrimination Under Title VI of the Civil Rights Act of 1964.**

A.     This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 CFR Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B.     In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or

occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

**Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968.** This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

**Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975.** This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

**Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974.** This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 CFR Section 570.607), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I of the Act.

**Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063.** This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 CFR Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

**Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973.** This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 CFR Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

**Sec. 109. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.**

A. The work to be performed under this contract is subject to the

requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

**Sec. 110. Relocation Assistance and Property Acquisition Requirements.** If the Contractor is a department, agency or instrumentality of a State or of a political subdivision of the State, then this Agreement is subject to the relocation and acquisition requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42, and 24 CFR 570.606.

**Sec. 111. Conflict of Interest.**

**(A) Conflicts Prohibited.**

1) Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, consultants, officers, or elected or appointed officials of the Contractor or of the City who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2) The Contractor's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3) No employee, officer or agent of the Contractor shall perform or provide part-time services for compensation, monetary or otherwise, to a consultant or other subcontractor that has been retained by the Contractor under this Agreement.

4) In the event of a real or apparent conflict of interest, the person involved shall submit to the Contractor and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 CFR 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by the City and/or HUD, the City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

**(B) Interest of Certain Federal Officials.** No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**Sec. 112. Political Activity Prohibited.** None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

**Sec. 113. Lobbying Prohibited.** None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

**Sec. 113(a) Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121.** Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this

Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Sec. 114. Copyrights.** If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

**Sec. 115. Patents.** Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

**Sec. 116. Program Income.** Unless otherwise specified in Part I of this Agreement, all program income as defined by HUD at 24 CFR Part 570.500(a) shall be returned to the City. Any program income on hand when this Agreement expires, or received after this Agreement expires shall be paid to the City.

## **ARTICLE II**

### **DISBURSEMENTS AND ACCOUNTING**

**Sec. 201.      Eligible and Ineligible Costs.** Costs under this Agreement are governed by OMB Circular A-87 or A-122 as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (B) Be no more liberal than policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (C) Not be allocable to or included as a cost of any other Federally financed program; (D) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (E) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

**Sec. 202.      Documentation of Costs.** All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

**Sec. 203.      Charges Against Project Account.**

(A) Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from the Planning and Development Office.

(B) At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(C) In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

(D) Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

(E) Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue

in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

**Sec. 204. Method of Payment and Disbursements.**

The Contractor must submit properly executed invoices and requests for payment to the Planning and Development Office. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a 10% retainage by the City. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

**Sec. 205. Travel Expenses.** Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

**Sec. 206. Designation of Depository.** The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

**Sec. 207. Refunds.** The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

**Sec. 208. Examination of Records.** The Contractor agrees that the Comptroller General of the United States, the U.S. Department of Housing and Urban Development, the City or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Agreement.

### **ARTICLE III** **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

**Sec. 301. Lead-Based Paint Hazards.** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 CFR Part 570.608. The Contractor is responsible for the inspections and certifications required.

**Sec. 302. Davis-Bacon Act.** Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-5, and applicable regulations of the Department of Labor under 29 CFR Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must



be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010.

**Sec. 303. Contract Work Hours and Safety Standards Act.** All federally assisted construction contracts of more than \$2,000.00 and all other contracts employing mechanics or laborers of more than \$2,500.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 et seq.) and Department of Labor regulations (29 CFR 5), requiring that wages be paid at not less than one and one-half times the basic wage rates for all hours worked in excess of forty in a work week. No mechanic or laborer shall be required to work under conditions which are unsanitary, hazardous or dangerous to health and safety.

**Sec. 304. Anti-Kickback Act.** If this Agreement involves construction or repair, then it is subject to the Copeland "Anti-Kickback" Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 CFR Part 5), prohibiting and prescribing penalties for "kickbacks" of wages. Wages must be paid at least once a week in accordance with the requirements of 29 CFR 5.5.

**Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended.** If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 CFR Part 130, and the Department of Labor Regulations at 41 CFR Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 CFR Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

"During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this

nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order 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 subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such

government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings."

#### **ARTICLE IV** **ENVIRONMENTAL AND HISTORIC CONDITIONS**

**Sec. 401. Environmental Clearance.** No funds under this Agreement may be obligated or spent for acquisition or construction until Contractor has received written environmental clearance from the City's Planning and Development Office. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

**Sec. 402. Compliance with Clean Air and Water Acts.** If this Agreement provides assistance in excess of \$100,000, then the Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

**Sec. 403. Additional Environmental and Historic Conditions.** This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A) National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24

CFR Part 58) and the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B) National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D) Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E) Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F) Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H) Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I) Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J) Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on the National Wild and Scenic Rivers System;

K) Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L) Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M) HUD Environmental Criteria and Standards, (24 CFR Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

## **ARTICLE V**

### **TERMINATION**

**Sec. 501. Termination Due to Loss of Funding.** This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

**Sec. 502. Termination for Cause.**

(A) The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

(B) If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

**Sec. 503. Termination for Convenience.** The Contractor and the City may terminate this Agreement by agreeing upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated.

**Sec. 504. Payment After Termination.** The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

**Sec. 505. Reversion of Assets.** Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 CFR 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

## **ARTICLE VI**

## **MISCELLANEOUS**

**Sec. 601. Personnel.** The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

**Sec. 602. Subject to Local Laws.** This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado .

**Sec. 603. Contractual Relationship.** The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

**Sec. 604. When Rights and Remedies Not Waived.** Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

**Sec. 605. Sales and Use Taxes.** The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

**Sec. 606. Assignment.** The Contractor shall not assign this Agreement without the prior written consent of the City.

**Sec. 607. Patented Devices, Materials, and Processes.** If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

**Sec. 608. No Third Party Beneficiary Rights.** The City is not obligated or liable to any party other than the Contractor.

**Sec. 609. Titles and Subheadings.** The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

**Sec. 610.     Notices.** All notices shall be given by certified mail. Notices to the City shall be separately addressed to the Mayor and the Administrator of the Planning and Development Office. Either of the parties may designate in writing substitute addresses or persons to receive notices.

**Sec. 611.     Published Information and Announcements.** The contractor agrees to coordinate with the City's Planning and Development Office to assure that the activity financed in whole or in part by this agreement is properly referenced by the contractor in press releases, brochures, annual reports, speeches and other published information and announcements.

**BY AUTHORITY**

ORDINANCE NO. 269  
SERIES OF 2005

COUNCIL BILL NO. 244  
COMMITTEE OF REFERENCE:

**A BILL** Economic Development

**For an ordinance approving a proposed Loan Agreement between the City and County of Denver and St. Charles Town Company, LLC for the acquisition of property associated with the redevelopment of the Lowenstein Theater.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed Loan Agreement between the City and County of Denver and St. Charles Town Company, LLC, in the words and figures contained and set forth in that form of Loan Agreement, filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, on the 14th day of April, 2005, City Clerk's Filing No. 05-262 is hereby approved.

COMMITTEE APPROVAL: Will be considered 4/20/05. Permission to file granted by Councilpersons Elbra Wedgeworth and Michael Hancock.

MAYOR-COUNCIL DATE: April 12, 2005.

PASSED BY THE COUNCIL April 25 2005

[Signature] - PRESIDENT

APPROVED: [Signature] - MAYOR 4/26 2005

ATTEST: [Signature] - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2005

PREPARED BY: Daniel B. Slattery DBS - ASSISTANT CITY ATTORNEY - April 14, 2005

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to §3.2.6 of the Charter.

Cole Finegan, City Attorney

BY: [Signature], Asst City Attorney

DATE: 14 Apr 05