

6-18-12

**51-R-12**

**A RESOLUTION**

**Authorizing the City Manager to Execute a  
Letter of Understanding for the Lease of  
727-729 Howard Street, Evanston, Illinois**

**WHEREAS**, the City of Evanston owns certain commercial real property commonly known as 727-729 Howard Street, Evanston, Illinois 60202 (the "Subject Property");

**WHEREAS**, the Subject Property is improved with a commercial building to which City Lit Theatre Company, an Illinois not-for-profit corporation ("City Lit"), seeks to lease the Subject Property, with an option to purchase, and use the space as a venue for literature performance theatre productions;

**WHEREAS**, the City Council adopted Resolution 2-R-12 on January 23, 2012 authorizing the City Manager to execute a letter of understanding with City Lit, which has subsequently expired;

**WHEREAS**, the City Council of the City of Evanston has determined that the best interests of the City of Evanston would be served by executing another letter of understanding with the prospective tenant for the Subject Property and renewing its support for the project. Any such undertaking to execute a definitive agreement is subject to further City Council review and approval;

**NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** The City Manager is hereby authorized and directed to execute the attached letter of understanding and to negotiate all necessary terms for a lease agreement with an option to purchase the Subject Property, as he may determine to be in the best interests of the City, and that may be in a form acceptable to the Corporation Counsel.

**SECTION 2:** That this Resolution 51-R-12 shall be in full force and effect from and after its passage and approval in the manner provided by law.

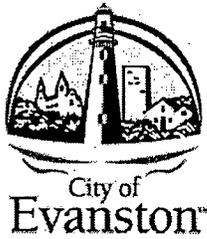
  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: June 25, 2012

**EXHIBIT A**  
**LETTER OF UNDERSTANDING**



Law Department  
2100 Ridge Avenue  
Evanston, IL 60201  
T: 847.866.2937  
F: 847.448.8093

June 18, 2012

City Lit Theatre  
Attn: Terry McCabe and Brian Pastor  
1020 West Bryn Mawr  
Chicago, IL 60660

RE: Amended Letter of Understanding – 727-729 Howard Street, Evanston, Illinois

Dear Mr. McCabe and Mr. Pastor:

We are pleased to submit this amended Letter of Understanding (the "Letter"), which sets forth certain nonbinding understandings and certain binding agreements between The City of Evanston, an Illinois municipal corporation ("Evanston") and the City Lit Theatre Company, an Illinois not-for-profit corporation ("City Lit"). Evanston and City Lit shall be collectively referred to as the "Parties".

The Parties seek to enter into this Letter with respect to a commercial lease and grant agreement (the "Project") for the commercial property commonly known as 727-729 Howard, Evanston, Illinois (the "Property"). The Parties executed a Letter of Understanding on or about January 27, 2012 regarding the Project, which has expired and the Parties wish to renew the understanding.

#### **PART ONE – BINDING PROVISIONS**

Upon execution by City Lit of this Letter or counterparts thereof, the following numbered paragraphs of this Letter (collectively, the "Binding Provisions") will constitute the legally binding and enforceable agreement by and between City Lit and Evanston, but still subject to final approval by the City Council.

1. Execution of Definitive Agreement. City Lit and Evanston will negotiate in good faith to enter into a definitive agreement (the "Definitive Agreement") setting forth in more detail the terms and conditions governing the details of the Project, consistent with the nonbinding and binding provisions of this Letter. If Evanston and City Lit are unable to negotiate and prepare a mutually acceptable Definitive Agreement by November 1, 2012, either Evanston or City Lit may terminate this Letter by giving written notice to the other party (the "Letter Term"). In the event of such notice, none of Evanston, City Lit or their respective directors, officers, attorneys, employees, shareholders, representatives or advisors will have any

further obligations or liability under this Letter. Evanston staff and the City Council will be further evaluating the Project and its feasibility following the execution of this Letter.

2. Representations, Warranties, Conditions and Covenants. The Definitive Agreement will contain such representations, warranties, conditions and other terms and conditions as are customary or appropriate for a transaction of this kind.

3. No Material Change. Evanston's obligation to engage in a relocation assistance program for City Lit from its current facility to the Property will be conditioned upon Evanston's determination that there has been no material change from the basic terms set forth in this Letter, City Lit's financial condition and ability to finance the Project, or other factors for the feasibility of the Project.

### **PART TWO – NON-BINDING PROVISIONS**

The following numbered paragraphs of this Letter (collectively, the "Non-binding Provisions") reflect the Parties mutual understanding of the matters described in them, but each party acknowledges that the Nonbinding Provisions are not intended to create or constitute any legally binding obligation between Evanston and City Lit shall not have any liability to any other party with respect to the Nonbinding Provisions until a definitive agreement (defined below) is prepared, authorized, executed and delivered by and between the Parties.

1. Permitted Use. City Lit will be relocating its operations and theater company to the City of Evanston. City Lit shall perform stage adaptations of literary material at the Property. The Parties also anticipate that the Property will also be used for the viewing of classic films, cabaret performances, and rehearsal space.

2. Lease with Option to Purchase. The Parties anticipate that the Definitive Agreement will be structured as a three-year commercial lease agreement with an option to purchase the Property. The monthly rent will be \$1,800.00. The rental payments will be deposited into an account with Evanston, to be used as a future security deposit if City Lit exercises its option to purchase the Property. In the event that City Lit does not exercise its option, the rental payments will be kept by Evanston and Evanston will be freely able to market the Property. City Lit will be responsible for the payment of all utilities and real estate property taxes for the Property. The purchase price for the Property is \$325,000.00, subject to City Council approval and City Lit purchasing the Property.

3. Improvements. The Parties anticipate major renovations to the Property and the cost of the improvements to be split is anticipated as follows:

a) Evanston paid improvements: raising the roof of the structure a half-story up to \$600,000.00 ("Property Improvement Funds") and any costs above \$600,000.00 shall be paid by City Lit.

b) City Lit paid improvements: (i) installation of a stage, audience risers and seats, dimmers and other lighting equipment; (ii) lay floor treatments; (iii) installation of two sound systems for the performance space and the lobby; (iv) paint the premises; and (v) installation of outdoor signage.

c) Further improvements will be determined based on the site plan for the Property and the parties will work cooperatively to determine the party to bear the responsibility and costs for said construction.

d) Evanston shall record a restrictive covenant against the Property regarding the Property Improvement Funds. The restrictive covenant shall state: (1) if City Lit sells the Property; or (2) discontinues the Permitted Use within 10 years of purchase; the Evanston paid Property Improvement Funds shall be paid back to the City in a lump sum within 6 months of the sale or discontinuance of the Permitted Use. The amount of the refund would be based on a decelerating scale and "burned off" as the 10<sup>th</sup> year of the restrictive covenant approaches.

e) City Lit must have the Project fully bid out and an executed contract with a general contractor by no later than November 1, 2012.

f) City Lit shall have a detailed funding plan, addressing all sources of funding, in place for the Project by no later than November 1, 2012.

4. Expenses and Fees. Upon signing this Letter, each party agrees to pay its own expenses incident to the due diligence process, negotiations, and preparation of the Definitive Agreement. In the event, however, City Lit decides not to purchase the Property from Evanston, for any reason, the terms of this Letter are null and void. In the event City Lit and Evanston, after exhausting good faith efforts to enter into a Definitive Agreement and fail to do so, each party to bear its own expenses.

5. Brokerage Fees. The Parties acknowledge and agree that there will be no brokerage commission and that the transaction is an arm's length transaction.

6. Multiple Counterparts. For the convenience of the Parties hereto, this Letter may be executed in multiple counterparts, each of which will be deemed an original, and all counterparts hereof so executed by the parties hereto, whether or not such counterpart will bear the execution of each of the parties hereto, will be deemed to be, and will be construed as, one and the same. A telecopy or facsimile transmission of a signed counterpart of this Letter shall be sufficient to bind the party or parties whose signature(s) appear thereon.

7. Effective Date, Terms. This Letter will be effective only if (i) it is executed by City Lit and (ii) a fully executed copy of this Letter is returned to Evanston on or before 5:00 p.m. CST on July 2, 2012. The Binding Provisions of this Letter shall

remain in full force and effect thereafter until the earlier of (i) the execution and delivery of the Definitive Agreement or (ii) the termination of this Letter.

IN WITNESS WHEREOF, the Parties have caused this Letter of Understanding to be executed this \_\_\_ day of \_\_\_\_\_, 2012.

CITY LIT THEATRE COMPANY  
An Illinois not-for-profit corporation

CITY OF EVANSTON,  
an Illinois municipal corporation

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

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

Print Name: \_\_\_\_\_

Wally Bobkiewicz

Its: \_\_\_\_\_

Its: City Manager

