

EXHIBIT C
(Redevelopment Agreement)

This agreement was prepared by and
after recording return to:
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City of Chicago Department of Law
121 North LaSalle Street, Room 600
Chicago, IL 60602

79 W. Monroe Redevelopment Agreement

This 79 W. Monroe Redevelopment Agreement (this "Agreement") is made as of this ____ day of ____, 2024, by and between the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), Brown Derby LLC, a Delaware limited liability company (the "Owner"), and R2 Development, LLC, an Illinois limited liability company (the "Developer", and collectively with the Owner, the "Developer Parties" or individually as a "Developer Party")

RECITALS

A. Constitutional Authority: As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "State"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.

C. City Council Authority: To induce redevelopment pursuant to the Act, in accordance with the provisions of the Act, the City Council of the City (the "City Council"): (i) approved and adopted a redevelopment plan and project (the "Redevelopment Plan") for the LaSalle Central Redevelopment Project Area (the "Redevelopment Area"); (ii) designated the Redevelopment Area as a "redevelopment project area"; and (iii) adopted tax increment allocation financing for the Redevelopment Area, pursuant to ordinances (item 3, the "TIF Adoption Ordinance" and items (1) – (3) collectively, the "TIF Ordinances") adopted on November 15, 2006 and subsequently amended on February 7, 2007 and May 9, 2007 and published in the Journal of the Proceedings of the City Council for such date.

D. The Project: The Owner currently owns certain property with existing building thereon located within the Redevelopment Area at 79 W. Monroe Street, Chicago, Illinois 60603 (the "Overall Property"). As of the [Closing Date], the Overall Property will be divided into [] separate parcels which separates property as follows: (i) certain property within the Overall Property comprising a portion of the [ground floor] and floors 7 through 14 (the "Property"), which shall be further divided into the "Affordable Property", as legally described on Exhibit A hereto, and (ii) the remainder of the Overall Property. Within the time frames set forth in Section 3.01

hereof, Developer Parties shall start and complete construction and/or rehabilitate a portion of the existing building located at the Property into an approximately 99,969 square foot housing development containing 117 residential units on Floors 7 through 13, consisting of 76 market-rate units and 41 affordable units (the "Affordable Units"), a tenant lounge, fitness center, and outdoor areas on Floor 14, and a small retail space, bike room, and dog run on the lower ground floor (collectively, the "Facility"). The Overall Property includes ground floor retail and a charter school, which uses are allowed to continue and are not included in the Facility or the Project.

The "Project" means the Facility and related improvements, including but not limited to the TIF-Funded Improvements defined below and set forth on Exhibit B. The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. Redevelopment Plan: Developer Parties will carry out the Project in accordance with this Agreement and the Redevelopment Plan.

F. City Financing: The City agrees to use, in the amounts set forth in Section 4.03, Incremental Taxes (as defined below), to pay for or reimburse Developer Parties for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

SECTION 1. RECITALS, HEADINGS AND EXHIBITS

The foregoing recitals are hereby incorporated into this Agreement by reference. The paragraph and section headings contained in this Agreement, including without limitation those set forth in the following table of contents, are for convenience only and are not intended to limit, vary, define, or expand the content thereof. Developer agrees to comply with the requirements set forth in the following exhibits which are attached to and made a part of this Agreement. All provisions listed in the Exhibits have the same force and effect as if they had been listed in the body of this Agreement.

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SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below, and unless otherwise specified, references to Recitals, Sections, Articles and Exhibits are references to Recitals, Sections, Articles and Exhibits of this Agreement:

"Act" is defined in the Recitals.

"Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with either Developer Party.

"Annual Compliance Report" means a signed report from Owner to the City (a) itemizing each of Developer Parties' respective obligations under this Agreement during the preceding calendar year, (b) certifying each of the Developer Parties' compliance or noncompliance with their respective obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that Developer Parties are not in default with respect to any provision of this Agreement, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) compliance with the Operating Covenant (Section 8.06); (2) compliance with Jobs Creation (Section 8.06); (3) delivery of Financial Statements and unaudited financial statements (Section 8.13); (4) delivery of updated insurance certificates, if applicable (Section 8.14); (5) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 8.15); (6) delivery of evidence of compliance with the Sustainable Development Policy (Section 8.22); (7) compliance with the Increment and Rate of Return Reporting (Section 8.25); (8) Compliance with the Affordability Requirements (Section 8.26); and (8) compliance with all other executory provisions of this Agreement.

"Available Project Funds" means: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by Owner pursuant to this Agreement.

"Capital Event" shall have the meaning set forth for such term in Section 4.09 hereof.

"Certificate" means the Certificate of Completion of Construction or Rehabilitation described in Section 7.01.

"City Contract" is defined in Section 8.01(l).

"City Council" is defined in the Recitals.

"City Funds" is defined in Section 4.03(b).

"City Regulatory Agreement" means Inclusionary Housing Agreement to be entered into as of the date of this Agreement by the City and Owner in a form acceptable to the City.

"Closing Date" means the date of execution and delivery of this Agreement by all parties to this Agreement, which shall be deemed to be the date appearing in the first paragraph of this Agreement, and shall not be later than 180 days following the date of City Council's approval of the Project Ordinance or such other date acceptable to the commissioner of DOH, in their sole discretion.

"Contaminant" means any of those materials set forth in 415 ILCS 5/3.165, as amended from time to time, that are subject to regulation under any Environmental Law.

"Contract" is defined in Section 10.03.

"Contractor" is defined in Section 10.03.

"Construction Contract" means the construction contract to be entered into between Owner and the General Contractor providing for construction of the Project.

"Corporation Counsel" means the City's Department of Law.

"CSI/ROR" shall mean the Comprehensive Site Investigation and Remediation Objectives Report required by the IEPA in order to receive a Final Comprehensive Residential NFR Letter.

"DOH" means the City's Department of Housing and any successor to said department.

"EDS" means the City's Economic Disclosure Statement and Affidavit, on the City's then-current form, whether submitted in paper or via the City's online submission process.

"Employer(s)" is defined in Section 10.

"Environmental Laws" means any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code (as defined below).

"Equity" means Owner funds (other than funds derived from Lender Financing, if any) irrevocably available for the Project, in the amount set forth in Section 4.01, which amount may be increased pursuant to Section 4.06 (Cost Overruns) or Section 4.03(b).

"Escrow" means the construction escrow established pursuant to the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement establishing a construction escrow, to be entered into as of the date of this Agreement by the City, if applicable, the Title Company (or an affiliate of the Title Company), Developer Parties and Owner's lender(s), in a form acceptable to the City.

"Event of Default" is defined in Section 15.

"Excess Proceeds" means all cash proceeds from a Capital Event less (1) repayment of any Project debt, (2) all transaction costs, including but not limited to tax liability related to such Capital Event and (3) Equity.

"Facility" is defined in the Recitals.

"Final Comprehensive Residential NFR Letter" shall mean a final comprehensive residential "No Further Remediation" letter issued by the IEPA approving the use of the Property for the construction, development and operation of the Project in accordance with the site plan approved by the City and the terms and conditions of the SRP Documents, as amended or supplemented from time to time. The Final Comprehensive Residential NFR Letter shall state that the Property meets remediation objectives for residential properties and the construction worker exposure route as set forth in 35 Ill. Adm. Code Part 742, but may be reasonably conditioned upon use and maintenance of engineered barriers and other institutional or engineering controls acceptable to the IEPA.

"Financial Interest" is defined in Section 2-156-010 of the Municipal Code.

"Financial Statements" means complete audited financial statements of Developer Parties prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

"General Contractor" means the general contractor(s) hired by Owner pursuant to Section 6.01.

"Hazardous Substance" has the meaning set forth in 415 ILCS 5/3.215, as amended from time to time.

"HTC Investor" means the to-be-admitted member of Owner providing HTC Equity to Owner in exchange in part for the receipt of federal historic tax credits related to the Project.

"Human Rights Ordinance" is defined in Section 10.

"IEPA" shall mean the Illinois Environmental Protection Agency.

"In Balance" is defined in Section 4.07.

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the TIF Fund

established to pay Redevelopment Project Costs and obligations incurred in the payment thereof, as adjusted to reflect the amount of the TIF District Administration Fee.

"Indemnitee" and "Indemnitees" are defined in Section 13.01.

"Investor Member" shall mean Lagfin SCA.

"Senior Mortgage" shall mean a Senior Mortgage executed by the [Owner] as mortgagor, in favor of the City, as mortgagee, securing certain of the Developer's obligations under this Agreement and the Senior Mortgage; and which shall be a first mortgage.

"Lender Financing, if any" means funds borrowed by Owner from lenders and irrevocably available to pay for costs of the Project, in the amount set forth in Section 4.01.

"MBE(s)" means a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

"MBE/WBE Budget" means the MBE/WBE Budget attached as Exhibit B, as described in Section 10.03.

"MBE/WBE Program" is defined in Section 10.03.

"Municipal Code" means the Municipal Code of the City of Chicago, as amended from time to time.

"New Mortgage" is defined in Article 16.

"Non-Governmental Charges" means all non-governmental charges, liens, claims, or encumbrances relating to Developer Parties, the Property, or the Project.

"Other Regulated Material" means any Waste, Contaminant, or any other material, not otherwise specifically listed or designated as a Hazardous Substance, that (a) is or contains: petroleum, including crude oil or any fraction thereof, motor fuel, jet fuel, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas, asbestos, radon, any polychlorinated biphenyl, urea, formaldehyde foam insulation, explosive or radioactive material, materials known to contain per- and polyfluoroalkyl substances, i.e. PFAS, or (b) is a hazard to the environment or to the health or safety of persons.

"Permitted Liens" means (i) mortgages against the Property and/or the Project recorded on or before the date of this Agreement and securing the Lender Financing, if any, (ii) leases of portions of the Property entered into after the date hereof in Owner's ordinary course of business, if any, and (iii) those matters set forth as Schedule B title exceptions in the Title Policy, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

"Permitted Mortgage" is defined in Article 16.

"Permitted Transfer" shall mean (a) the transfer by the HTC Investor of its membership interest to an Affiliate of the HTC Investor pursuant to the Operating Agreement of Owner upon the City's receipt of its corporate documents, an EDS, and any other affidavits or certifications as requested by the City and as may be required by federal, state or local law in the award of public contracts as contemplated by Section 5.14; and (b) the HTC's Investor member's sale of its interest in Owner to the Managing Member of an Affiliate of the Managing Member pursuant to the terms of the Owner Operating Agreement upon the City's receipt of its corporate documents, an EDS, and any other affidavits or certifications as requested by the City and as may be required by federal, state or local law in the award of public contracts as contemplated by Section 5.14.

"Plans and Specifications" means construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

"Prior Expenditures" is defined in Section 4.05(a).

"Project" is defined in the Recitals.

"Project Budget" means the Project Budget attached as Exhibit B, showing the total cost of the Project by line item, furnished by Developer to DPD, in accordance with Section 3.03.

"Project Ordinance" means the ordinance adopted by City Council on _____, 2024 and published in the Journal for such date at pages _____ - _____.

"Property" is defined in the Recitals.

"RACR" shall mean the Remedial Action Completion Report required by the IEPA in order to receive a Final No Further Remediation Letter.

"RAP" shall mean the Remedial Action Plan document required by the IEPA in order to receive a Final No Further Remediation Letter.

"RAP Approval Letter" shall mean written approval from the IEPA of a RAP.

"Redevelopment Area" is defined in the Recitals.

"Redevelopment Plan" is defined in the Recitals.

"Redevelopment Project Costs" means redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

"Remediation Work" means all investigation, sampling, monitoring, testing, reporting, removal, response, disposal, storage, remediation, treatment and other activities necessary to obtain a Final No Further Remediation Letter for the Property in accordance with the terms and conditions of the RAP Approval Letter for the Property issued by the IEPA, the SRP Documents (as defined below), all requirements of the IEPA, and all applicable Laws, including, without limitation, all applicable Environmental Laws.

"Requisition Form" means the document, in the form to be provided by the City, to be delivered by Developer to DPD pursuant to Section 4.04 of this Agreement.

"Reporting Period" means the period of time starting on the date the Certificate is issued and continuing until the tenth anniversary of such date.

"Scope Drawings" means preliminary construction documents containing a site plan and preliminary drawings and specifications for the Project.

"SRP" shall mean the Illinois Site Remediation Program codified at 35 Ill. Adm. Code Part 740 et seq.

"SRP Documents" means all documents submitted to the IEPA under the SRP, as amended or supplemented from time to time, including, without limitation, the CSI/ROR, the RAP, and the RACR and any and all related correspondence, data and other information prepared by either party pursuant to Section 11.

"Survey" means a plat of survey in the most recently revised form of ALTA/NSPS land title survey of the Property, meeting the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, effective February 23, 2021, dated within 75 days before the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility and related improvements as required by the City or lender(s) providing Lender Financing, if any).

"Sustainable Development Policy" shall mean the Sustainable Development Policy of the City as in effect on the Closing Date.

"Term of the Agreement" means the period of time starting on the Closing Date and ending on the thirtieth anniversary of the issuance of the Certificate.

"TIF Adoption Ordinance" is defined in the Recitals.

"TIF District Administration Fee" means the fee described in Section 4.05(b).

"TIF Fund" means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

"TIF-Funded Improvements" means those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. Exhibit B lists the TIF-Funded Improvements for the Project.

"TIF Ordinances" is defined in the Recitals.

"Title Company" means Chicago Title Insurance Company.

"Title Policy" means a title insurance policy in the most recently revised ALTA or equivalent form, showing fee simple title in the Owner's name and naming the City as the insured mortgagee in the full amount of the City Funds, noting the recording of this Agreement and the Senior Mortgage as encumbrances against the Property, and a subordination agreement in a form acceptable to the City in favor of the City with respect to previously recorded liens against the Property related to Lender Financing, if any, if any, issued by the Title Company.

"WARN Act" means the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

"Waste" means those materials defined in the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. as waste and identified subcategories thereof, including but not limited to, construction or demolition debris, garbage, household waste, industrial process waste, landfill waste, landscape waste, municipal waste, pollution control waste, potentially infectious medical waste, refuse, or special waste.

"WBE(s)" means a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, Owner shall, pursuant to the Plans and Specifications and subject to the provisions of Section 18.17: (i) start construction no later than 180 days after the Closing Date; and (ii) complete construction and conduct business operations in the Facility no later than 24 months after the Closing Date.

3.02 Scope Drawings and Plans and Specifications. Developer shall submit to DPD and/or DOH Scope Drawings and Plans and Specifications, and each respective department reserves the right to review and approve these documents. The Scope Drawings and Plans and Specifications shall always conform to the Redevelopment Plan and all applicable federal, state, and local laws, ordinances and regulations. Developer Parties shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budget. Developer Parties have furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than \$[64,194,720]. Owner hereby certifies to the City that (a) the City Funds, together with Lender Financing, if any, and Equity described in Section 4.02, shall be sufficient to complete the Project; and (b) the Project Budget is true, correct, and complete in all material respects.

3.04 Intentionally omitted.

3.05 DPD Review. DPD's review of the Scope Drawings, Plans and Specifications is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DPD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

3.06 Other Approvals. Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals). Developer Parties shall not start construction of the Project until Developer has obtained all necessary permits and approvals and proof of the General Contractor's and each subcontractor's bonding as required under this Agreement.

3.07 Progress Reports and Survey Updates. If requested by DPD, Developer shall provide DPD with written progress reports detailing the status of the Project, including a revised completion date, if necessary. Written progress reports must be submitted to DPD electronically to the website and/or email specified by the City. Developer shall provide an updated Survey to DPD if requested by DPD or any lender providing Lender Financing, if any, reflecting improvements made to the Property.

3.08 Intentionally omitted.

3.09 Barricades. Before starting any construction requiring barricades, Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances, and regulations. DPD retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content, and design of all barricades.

3.10 Signs and Public Relations. Developer Parties shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding Developer, the Property and the Project in the City's promotional literature and communications.

3.11 Utility Connections. Developer Parties may connect all on-site water, sanitary, storm and sewer lines constructed on the Property to City utility lines existing on or near the perimeter of the Property, provided Developer Parties first comply with all City requirements governing such connections, including the payment of customary fees and costs related to such connections.

3.12 Permit Fees. In connection with the Project, Owner shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The estimated total cost of the Project is \$64,194,720, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to <u>Sections 4.03(b)</u> and <u>4.06</u>)	
Equity	\$28,373,150
Historic Tax Credit Equity	\$7,821,570
Lender Financing, if any*	\$0

City Funds (subject to <u>Section 4.03</u>)	\$28,000,000
Estimated Total	\$64,194,720

The payment of City Funds, including the timing of payment, is subject to the terms and conditions of this Agreement, including but not limited to Section 4.03 and Section 5.

4.02 Developer Funds. Equity and/or Lender Financing, if any, shall be used to pay all Project costs, including but not limited to Redevelopment Project costs and costs of TIF-Funded Improvements.

4.03 City Funds.

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse Developer Parties for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit B sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item in Exhibit B (subject to Sections 4.03(b) and 4.05(b)), contingent upon the City receiving documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5, the City hereby agrees to provide City funds from the sources and in the amounts described directly below (the "City Funds") to pay for or reimburse Developer for the costs of the TIF-Funded Improvements:

<u>Source of City Funds</u>	<u>Maximum Amount</u>
Incremental Taxes	\$28,000,000

provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed the lesser of \$28,000,000 or []% of the actual total Project costs, with such amount to be further reduced by the TIF District Administration Fee; and provided further, that the City Funds to be derived from Incremental Taxes shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as the amount of the Incremental Taxes deposited into the TIF Fund shall be sufficient to pay for such costs.

Developer Parties acknowledge and agree that the City's obligation to pay for TIF-Funded Improvements up to a maximum of \$28,000,000 is contingent upon the fulfillment of the conditions set forth in this subsection. If such condition is not fulfilled, the amount of Equity to be contributed by Owner pursuant to Section 4.01 shall increase proportionately.

(c) Disbursement of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03, the City shall disburse the City Funds in three (3) payments as follows:

(i) \$14,000,000 when the Developer incurs TIF-Funded Improvements in the amount of \$14,000,000 upon completion of 50% of the construction of the Project as certified to the City in a Requisition Form with required supporting documentation;

(ii) \$7,000,000 when the Developer incurs TIF-Funded Improvements in the amount of \$21,000,000 upon completion of 75% of the construction of the Project as certified to the City in a Requisition Form with required supporting documentation; and

(iii) \$7,000,000 upon issuance of Certificate.

4.04 Intentionally Omitted.

4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

(a) Effect of Prior Expenditures on Equity or Lender Financing, if any, demonstrated before the Closing Date. If Developer Parties incur and pay Project expenses before the Closing Date and want these expenses to reduce the amount of Equity or Lender Financing, if any, Developer is required to demonstrate before the Closing Date, then Developer Parties shall provide documentation of these expenses satisfactory to DPD. Any such expenses reviewed and approved in writing by DPD, in its sole discretion, shall be referred to as "Prior Expenditures". Prior Expenditures made for TIF-Funded Improvements may be reimbursed to Developer Parties under the terms of this Agreement. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to Developer but shall reduce the amount of Equity and/or Lender Financing, if any, Developer is required to contribute under Section 4.01. Prior Expenditures, if applicable, shall be listed on Exhibit E.

(b) TIF District Administration Fee. Annually, the City may allocate from the TIF Fund an amount (the "TIF District Administration Fee") not to exceed five percent (5%) of the Incremental Taxes to pay costs the City incurred to administer and monitor the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds before any City Funds are paid under this Agreement.

(c) Intentionally Omitted.

4.06 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.03, or if the cost of completing the Project exceeds the Project Budget, Owner shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

4.07 Preconditions of Disbursement. Before each disbursement of City Funds, Developer Parties shall submit a requisition form and documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its sole discretion. The Developer Parties' delivery of any request for disbursement of City Funds shall, in addition to the items expressly set forth in such request, constitute Developer Parties certification to the City, as of the date of such request for disbursement, that:

(a) the total amount of the disbursement request represents the actual cost of the acquisition of the Property or the actual amount payable to (or paid to) the General Contractor and/or subcontractors who have performed work on the Project, and/or their payees;

(b) all amounts shown as previous payments on the current disbursement request have been paid to the parties entitled to such payment;

(c) Developer Parties have approved all work and materials for the current disbursement request and such work and materials conform to the Plans and Specifications;

(d) the representations and warranties contained in this Agreement are true and correct and each Developer Party is in compliance with any covenants contained in this Agreement which may be applicable to such Developer Party;

(e) Developer Parties have received no notice and have no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens;

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(g) the Project is In Balance. The Project shall be deemed to be in balance ("In Balance") only if the total of the Available Project Funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. Developer hereby agrees that, if the Project is not In Balance, Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require Developer Parties to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by Developer. In addition, Developer shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the TIF Ordinances, this Agreement and/or the Escrow Agreement.

4.08 Conditional Grant. The City Funds are being granted on a conditional basis, subject to Developer's compliance with the provisions of this Agreement, and are subject to being reimbursed as provided in Section 15.02.

4.09 Return of City Funds Upon Refinance, Sale or Transfer. Except in connection with the refinance of the Historic Tax Credit Equity, in the event of a refinance, sale or transfer of the Project or any part thereof (each happening being a "Capital Event") to an unrelated third party, the Owner agrees to pay and remit to the City at the following schedule: (a) from the Closing Date until the fifth anniversary of the issuance of the Certificate, an amount equal to 75% of the Excess Proceeds from the Capital Event up to the full amount of City Funds paid as of the date of the Capital Event, and (b) from the fifth anniversary of the issuance of the Certificate until the end of the Reporting Period, an amount equal to 20% of the Excess Proceeds from the Capital Event up to the full amount of City Funds paid as of the date of the Capital Event

4.10 Intentionally Omitted.

SECTION 5. CONDITIONS PRECEDENT

Developer Parties have complied with the following conditions to the City's satisfaction on or before the Closing Date:

5.01 Project Budget. Developer Parties have submitted to DPD, and DPD has approved, a Project Budget in accordance with the provisions of Section 3.03.

5.02 Scope Drawings and Plans and Specifications. Developer Parties have submitted to DPD, and DPD has reviewed, the Scope Drawings and Plans and Specifications in accordance with the provisions of Section 3.02.

5.03 Other Governmental Approvals. Developer Parties have secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and have submitted evidence thereof to DPD.

5.04 Financing. Developer Parties have furnished proof reasonably acceptable to the City that Owner has Equity and Lender Financing, if any, in the amounts set forth in Section 4.01 to complete the Project and satisfy its obligations under this Agreement. If such funds include Lender Financing, if any, Developer Parties have furnished proof as of the Closing Date that the proceeds of the Lender Financing, if any, (a) are available for Owner to draw upon as needed and (b) are sufficient, along with the Equity and/or other sources set forth in Section 4.01, to complete the Project. If the City is not a party to the Escrow Agreement, then Developer has delivered to DPD a copy of the Escrow Agreement. Any liens against the Property existing at the Closing Date have been subordinated to certain encumbrances of the City set forth in this Agreement pursuant to a subordination agreement, in a form acceptable to the City, executed on or before the Closing Date, which is to be recorded, at Developer's expense, with the Cook County Clerk's Office.

5.05 Acquisition and Title. On the Closing Date, Developer Parties have furnished the City with a Title Policy for the Property, certified by the Title Company. The Title Policy is dated as of the Closing Date and contains only those title exceptions that are Permitted Liens and evidences the recording of this Agreement and the Senior Mortgage pursuant to the provisions of Section 8.18. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access, and survey. Developer Parties have provided to DPD, on or before the Closing Date, documentation related to the purchase of the Property and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements to the Title Policy.

5.06 Evidence of Clean Title. Developer Parties, at their own expense, have provided the City with searches as indicated in the chart below under Developer Parties' name and Developer Parties' trade names showing no liens against the Developer Parties, the Property or any fixtures now or hereafter affixed to the Property, except for the Permitted Liens:

Jurisdiction	Searches
Secretary of State	UCC, Federal tax

Cook County Clerk's Office	UCC, Fixtures, Federal tax, State tax, Memoranda of judgments
U.S. District Court, Northern District - Illinois	Pending suits and judgments, Bankruptcy
Clerk of Circuit Court, Cook County	Pending suits and judgments

5.07 Surveys. Developer Parties have furnished the City with a copy of the Survey.

5.08 Insurance. Owner, at its own expense, has insured the Property in accordance with Section 12, and has delivered certificates required pursuant to Section 12 evidencing the required coverages to DPD.

5.09 Opinion of Developer's Counsel. On the Closing Date, Developer Parties have furnished the City with an opinion of counsel in form and substance acceptable to Corporation Counsel. If Developer Parties have engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions required by the Corporation Counsel, such opinions must be obtained by Developer Parties from its general corporate counsel or such other counsel acceptable to the Corporation Counsel.

5.10 Evidence of Prior Expenditures. Developer Parties have provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures, if any, in accordance with the provisions of Section 4.05(a).

5.11 Financial Statements. Developer Parties has provided Financial Statements to DPD for its most recent three fiscal year and audited or unaudited interim financial statements.

5.12 [Intentionally Omitted].

5.13 Environmental. Developer Parties have provided DPD with copies of that certain Phase I ESA, as hereinafter defined, completed with respect to the Property and any Phase II ESA, as hereinafter defined, with respect to the Property required by the City. Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

5.14 Corporate Documents; Economic Disclosure Statement. Each party comprising the Developer Parties have provided a copy of its articles or certificate of incorporation or organization containing the original certification of the Secretary of State; certificates of good standing from the Secretary of State of its state of incorporation or organization and all other states in which Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; bylaws or operating agreement; and such other organizational documentation as the City has requested.

Each party comprising the Developer Parties has provided to the City an EDS, dated as of the Closing Date, which is incorporated by reference, and Developer further will provide any other affidavits or certifications as may be required by federal, state, or local law in the award of public contracts, all of which affidavits or certifications are incorporated by reference. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Developer Parties and any other parties required by this Section 5.14 to complete an EDS must

promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership and changes in disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

5.15 Senior Mortgage. The Owner shall have delivered to the City the Senior Mortgage and such financing statements as the City may require.

SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Intentionally Omitted.

6.02 Construction Contract.

(a) Developer shall submit copies of the Construction Contract to DPD. Copies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days after they are signed. Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been reviewed by DPD, if requested by DPD in accordance with Section 3.02, and all requisite permits have been obtained.

(b) Before executing the Construction Contract, Developer Parties shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with Section 6.01 above, for DPD's prior written approval, which DPD shall grant or deny within ten (10) business days after delivery of the proposed Construction Contract. Within ten (10) business days after the Construction Contract is executed by all parties thereto, Developer Parties shall deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments, or supplements thereto.

6.03 Performance and Payment Bonds. Before starting construction of any portion of the Project, Developer Parties shall require that the General Contractor be bonded for its performance and payment by sureties having an AA rating or better using American Institute of Architect's Form No. A312 or its equivalent. Before starting construction of any portion of the Project which includes work on the public way, Developer shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better using a bond in the form acceptable to the City. The City shall be named as obligee or co-obligee on any such bonds.

6.04 Employment Opportunity. Developer Parties shall contractually obligate and cause the General Contractor and each subcontractor to agree to the provisions of Section 10.

6.05 Other Provisions. In addition to the requirements of this Section 6, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to Section 8.09 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement), Section 10.03 (MBE/WBE Requirements, as applicable), Section 12 (Insurance) and Section 14.01 (Books and Records). Copies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof.

SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon completion of the construction and/or rehabilitation of the Project in accordance with the terms of this Agreement, and upon Developer Parties' written request, DPD shall issue to Developer Parties a Certificate in recordable form certifying that Developer Parties have fulfilled their obligation to complete the construction and/or rehabilitation of the Project in accordance with the terms of this Agreement. DPD shall use best efforts to respond to Developer Parties' written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by Developer to obtain the Certificate. Developer may resubmit a written request for a Certificate upon completion of such measures.

Developer Parties acknowledge and understand that the City will not issue the Certificate and pay out City Funds in connection with the Project, until the following conditions have been met:

- (a) Evidence acceptable to DPD that the total Project Cost equals or exceeds \$[64,194,720]; as described in Section 4.03(b), the City Funds will be reduced on pro rata basis if the Total Project Cost is less than this amount; and
- (b) Evidence that Developer Parties has incurred TIF-eligible expenses in an amount equal to, or greater than, the total amount of City Funds for the Project (up to \$28,000,000); and
- (c) Receipt of a final certificate of occupancy for the Project; and
- (d) Evidence acceptable to DPD that the Project has complied with building permit requirements for the Project; and
- (e) Evidence acceptable to DPD in the form of a closeout letter from DPD's Compliance and Monitoring division stating that Developer is in complete compliance with all City Requirements (MBE/WBE, City Residency, and Prevailing Wage); and
- (f) Evidence acceptable to DPD that the Project has complied with the City's Sustainable Development Policy; and
- (g) Developer has submitted a preliminary summary of information in a form and content acceptable to DPD's Historic Preservation Division, regarding the historic characteristics of the Property and for the purpose of the landmark designation of the Property; and
- (h) Evidence acceptable to DPD in the form of an Affordable Requirements Ordinance Letter of Compliance with standards for construction of the Affordable Units [and Affirmative Fair Housing Marketing Plan]; and
- (i) A letter from DOH's Long-term Monitoring and Compliance Division confirming that all residential units are leased and the 30-year affordability period [pursuant to that certain Inclusionary Housing Agreement] has started; and
- (j) There exists neither an Event of Default which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the construction and/or rehabilitation of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to Developer Parties obligation to complete

that the terms of the Agreement specifically related to Developer Parties obligation to complete such activities have been satisfied. After the Certificate is issued, however, all executory terms and conditions of this Agreement and all representations and covenants contained in this Agreement will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at Section 8.02 (Covenant to Redevelop), Section 8.06 (Jobs Creation; Operating Covenant), Section 8.19 (Real Estate Provisions), Section 8.20 (Annual Compliance Report), Section 8.26 (Affordable Housing Covenant) and Section 14.02 (Inspection Rights) as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that when the Certificate is issued, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the Certificate is issued shall be binding only upon Developer Parties or a permitted assignee of the Developer Parties who, pursuant to Section 18.14 (Assignment) of this Agreement, has contracted to take an assignment of Developer Parties' rights under this Agreement and assume Developer Parties' liabilities under this Agreement.

7.03 Failure to Complete. If Owner fails to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

(a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed under this Agreement;

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. If the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.03, Developer Parties shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to place a lien on the Project in the amount of City Funds paid and/or to seek reimbursement of the City Funds from Developer Parties .

7.04 Notice of Expiration of Term of Agreement. When the Term of the Agreement expires, at Developer Parties' written request DPD shall provide Developer Parties with a written notice in recordable form stating that the Term of the Agreement has expired.

SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF DEVELOPER.

8.01 General. Each Developer Party represents, warrants, and covenants, as of the date of this Agreement as follows: The representations and warranties provided by Developer under this Agreement are material conditions precedent to the City's obligations under this Agreement. Developer represents, warrants, and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder and throughout the Term of the Agreement, that:

(a) Owner is a Delaware limited liability company duly organized, validly existing, qualified to do business in Delaware and in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required ;

(b) Developer is an Illinois limited liability company, duly organized, validly existing, qualified to do business in Delaware and in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required ;

(c) the execution, delivery and performance by each Developer Party of this Agreement has been duly authorized by all necessary action, and does not and will not violate its certificate or articles of incorporation or organization, bylaws or operating agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Developer is now a party or by which Developer is now or may become bound;

(d) Owner has acquired and shall maintain good, indefeasible, and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing, if any, as disclosed in the Project Budget and Non-Governmental Charges that Owner is contesting in good faith pursuant to Section 8.15);

(e) Developer Parties are now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

(f) There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending or, to the Developer Parties' actual knowledge, threatened or affecting the Developer Party which would impair its ability to perform under this Agreement;

(g) Owner has or will acquire as necessary and will maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project;

(h) Developer Parties are not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer Party is a party or by which Developer Party is bound ;

(i) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present Developer Parties' assets, liabilities, results of operations and financial condition, and there has been no material adverse change in Developer's Party's assets, liabilities, results of operations or financial condition since the date of Developer Party's most recent Financial Statements;

(j) prior to the issuance of the Certificate, Owner shall not do any of the following without the prior written consent of DPD: (1) sale, be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached to the Property) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of Owner's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any

transaction that would cause a material and detrimental change to Owner's financial condition; provided, however, that the foregoing notwithstanding, City consent shall not be required for a transfer from the Owner to one of Owner's subsidiaries or affiliates, or to an entity controlled by, under the control of, or under common control with the Owner;

(k) Owner has not incurred, and, before the Certificate is issued, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached to the Property, except Lender Financing, if any, disclosed in the Project Budget;

(l) None of the Developer Parties have made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into the Agreement or any City Contract with Developer in violation of Chapter 2-156-120 of the Municipal Code;

(m) None of the Developer Parties nor any affiliate of Developer Parties is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

(n) Developer Parties understand that (i) the City Funds are limited obligations of the City, payable solely from moneys on deposit in the account of the TIF Fund designated for the Project; (ii) the City Funds do not constitute indebtedness of the City within the meaning of any constitutional or statutory provision or limitation; (iii) Developer Parties will have no right to compel the exercise of any taxing power of the City for payment of the City Funds; and (iv) the City Funds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of Illinois or any political subdivision thereof;

(o) Developer Parties have sufficient knowledge and experience in financial and business matters, including municipal projects and revenues of the kind represented by the City Funds, and has been supplied with access to information, including a list of the City's Prior Obligations, to be able to evaluate the risks associated with the receipt of City Funds;

(p) Developer Parties understands that there is no assurance as to the amount or timing of receipt of City Funds, and that the amounts of City Funds actually received by such party may be substantially less than the maximum amounts set forth in Section 4.03(b);

(q) Developer Parties understand it may not sell, assign, pledge or otherwise transfer its interest in this Agreement or City Funds in whole or in part except in accordance with the terms of Section 18.14 (Assignment) of this Agreement, and, to the fullest extent permitted by law, agrees to indemnify the City for any losses, claims, damages or expenses relating to or based upon any sale, assignment, pledge or transfer of City Funds in violation of this Agreement; and

(r) Owner will consent in writing to the designation of the Property as a City of Chicago Landmark within 45 days from the date that DPD's Historic Preservation Division mails to Owner a request such consent to the proposed designation.

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in Sections 3.02 and 3.03, and Developer's receipt of all required building permits and governmental approvals, Developer Parties shall redevelop the Property in accordance with this Agreement and all its Exhibits, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments to such documents, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or Developer Parties. The covenants set forth in this Section shall run with the land and be binding upon any transferee but shall be deemed satisfied when the City issues the Certificate.

8.03 Redevelopment Plan. Developer Parties represent that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan, which is hereby incorporated by reference into this Agreement.

8.04 Use of City Funds. City Funds disbursed to Developer Parties shall be used by Developer Parties solely to pay for (or to reimburse Developer Parties for its payment for) the TIF-Funded Improvements as provided in this Agreement.

8.05 Other Bonds. Developer shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements; provided, however, that any such amendments shall not have a material adverse effect on Developer Parties or the Project. Developer Parties shall, at Developer's expense, cooperate and provide reasonable assistance in connection with the marketing of any such bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect to such bonds.

8.06 Jobs Creation; Operating Covenant. Developer Parties estimate that the Project will result in the creation of (i) approximately 5 full-time equivalent permanent jobs (the "Permanent Jobs") and (ii) during the construction of the Project, approximately 100 temporary full-time construction jobs (the "Construction Jobs," and collectively with the Permanent Jobs, the "Jobs"). Throughout the Reporting Period, the Owner shall submit certified employment reports disclosing the number of Jobs at the Project to DPD and DOH as a part of the Owner's submission of the Annual Compliance Report. Notwithstanding any other provision in this Agreement to the contrary, the failure to create the specified number of Jobs shall not constitute an Event of Default.

The covenants set forth in this Section shall run with the land and be binding upon any transferee.

8.07 Employment Opportunity; Progress Reports. Owner covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in Section 10. Developer Parties shall deliver to the City written progress reports detailing compliance with the requirements of Sections 8.09, 10.02 and 10.03 of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 75% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, Developer Parties shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, how Developer Parties shall correct any shortfall.

8.08 Employment Profile. Owner shall submit, and contractually obligate and cause the General Contractor or any subcontractor to submit, to DPD, from time to time, statements of its employment profile upon DPD's request.

8.09 Prevailing Wage. Owner covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, Developer shall provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.09.

8.10 Arms-Length Transactions. Unless DPD has given its prior written consent, no Affiliate of Developer Parties may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. Developer Parties shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by Developer and reimbursement to Developer for such costs using City Funds, or otherwise), upon DPD's request, before any such disbursement.

8.11 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, Developer represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in Developer's business, the Property or any other property in the Redevelopment Area.

8.12 Disclosure of Interest. Developer Parties' counsels have no direct or indirect financial ownership interest in Developer Parties, the Property or any other aspect of the Project.

8.13 Financial Statements. Developer Parties shall obtain and provide to DPD Financial Statements for Developer Parties' most recent fiscal year and each fiscal year thereafter for the Term of the Agreement. In addition, Developer Parties shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

8.14 Insurance. Developer Parties, at its own expense, shall comply with all provisions of Section 12.

8.15 Non-Governmental Charges. (a) Payment of Non-Governmental Charges. Except for the Permitted Liens, Developer Parties agree to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, Developer Parties may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. Developer shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question.

(b) Right to Contest. Developer Parties have the right, before any delinquency occurs:

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.15); or

(ii) at DPD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

8.16 Developer Parties' Liabilities. Developer Parties' shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement or to repay any material liabilities or perform any material obligations of Developer Parties to any other person or entity. Each of the Developer Parties shall immediately notify DPD of any and all events or actions which may materially affect its ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements related to this Project.

8.17 Compliance with Laws. To the best of each Developer Party's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, Developer Parties shall provide evidence satisfactory to the City of such compliance.

8.18 Recording and Filing. Owner shall cause this Agreement, certain exhibits (as specified by Corporation Counsel) and all amendments and supplements to this Agreement to be

recorded and filed, at Owner's expense, against the Property on the date hereof in the Cook County Clerk's Office.

8.19 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. Developer Parties agree to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer Parties, the Property or the Project, or become due and payable, and which create or may create a lien upon Developer or all or any portion of the Property or the Project. "Governmental Charge" means all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to Developer, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in Section 8.19(c) below; provided, that such real estate taxes must be paid in full when due and may be disputed only after such payment is made. No such contest or objection shall be deemed or construed in any way as relieving, modifying, or extending Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless Developer has given prior written notice to DPD of Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

(iii) Developer shall demonstrate to DPD's satisfaction that legal proceedings instituted by Developer contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the Property to satisfy such Governmental Charge before the final determination of such proceedings; and/or

(iv) Developer shall furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

(b) Developer's Failure To Pay Or Discharge Lien. If Developer fails to pay any Governmental Charge or to obtain discharge of the same, then Developer shall advise DPD in writing. At that time DPD in its sole discretion may, but shall not be obligated to, make all or any part of such payment or obtain such discharge and take any other related action which DPD deems advisable. By taking any action under this paragraph, DPD shall not waive or release any obligation or liability of Developer under this Agreement. Developer shall promptly reimburse DPD

for all sums, if any, DPD pays under this paragraph and expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto. Notwithstanding anything contained in this paragraph to the contrary, this paragraph shall not be construed to obligate the City to pay any Governmental Charge. If Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require Developer to submit to the City audited Financial Statements at Developer's own expense.

(c) Intentionally omitted.

(d) Notification to the Cook County Assessor of Change in Use or Ownership. If required under 35 ILCS 200/15-20 due to a change in use or ownership of the Property, within 90 days after the Closing Date, Developer shall complete a letter of notification, in accordance with 35 ILCS 200/15-20, notifying the Cook County Assessor of such change in use or ownership. After delivery of the notification, Developer shall forward a copy of the return receipt to DPD, with a copy to the City's Corporation Counsel's office.

8.20 Annual Compliance Report. Throughout the Reporting Period, Owner shall submit to DPD the Annual Compliance Report within 60 days after the end of the calendar year to which the Annual Compliance Report relates.

8.21 Inspector General. It is the duty of Developer Parties and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of Developer's officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant, to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Developer represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

8.22 Sustainable Development Policy. Developer Parties shall provide evidence acceptable to the City that they have complied with the Sustainable Development Policy for the Project within one (1) year after the date of the Certificate. If a default occurs under this Section 8.22, the City shall have the right to reduce the City Funds by \$250,000 as described in Section 15.02.

8.23. FOIA and Local Records Act Compliance.

(a) FOIA. Developer Parties acknowledge that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("FOIA"). The FOIA requires the City to produce records (very broadly defined in FOIA) in response to a FOIA request in a very short period of time, unless the records requested are exempt under the FOIA. If Developer receives a request from the City to produce records within the scope of FOIA, then Developer covenants to comply with such request within 48 hours of the date of such request. Failure by Developer to timely comply with such request shall be an Event of Default.

(b) Exempt Information. Documents that Developer Parties submit to the City as part of the Annual Compliance Report or otherwise during the Term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by Developer to be treated as a trade secret or information that would cause competitive harm, FOIA requires that Developer mark any

such documents as "proprietary, privileged or confidential." If Developer marks a document as "proprietary, privileged and confidential", then DPD will evaluate whether such document may be withheld under the FOIA. DPD, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

(c) Local Records Act. Developer acknowledges that the City is subject to the Local Records Act, 50 ILCS 205/1 et. seq, as amended (the "Local Records Act"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, Developer covenants to use its best efforts consistently applied to assist the City in its compliance with the Local Records Act.

8.24 Survival of Covenants. All warranties, representations, covenants and agreements of Developer contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties to this Agreement and, except as provided in Section 7 when the Certificate is issued, shall be in effect throughout the Term of the Agreement.

8.25 Increment and Rate of Return Reporting. Developer agrees to report the increment projected to be created by the Project at the Closing Date. Developer agrees to report the increment to date created by the Project. Developer agrees to report the Project's rate of return. Rate of return report to be independently verified by a third party chosen by the City.

8.26 Affordable Housing Covenant. Developer agrees and covenants to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, if any, the provisions of that certain City Regulatory Agreement shall govern the terms of Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

(a) The Facility shall be operated and maintained solely as residential rental housing with certain residential amenities and retail space;

(b) At least 7 of the Affordable Units shall be available for occupancy to and be occupied solely by one or more individuals qualifying as 40% AMI Families.

(c) At least 7 of the Affordable Units shall be available for occupancy to and be occupied solely by one or more individuals qualifying as 50% AMI Families.

(d) At least 13 of the Affordable Units shall be available for occupancy to and be occupied solely by one or more individuals qualifying as 60% AMI Families.

(e) At least 7 of the Affordable Units shall be available for occupancy to and be occupied solely by one or more individuals qualifying as 70% AMI Families.

(f) At least 7 of the Affordable Units shall be available for occupancy to and be occupied solely by one or more individuals qualifying as 80% AMI Families.

(g) The Affordable Units have monthly rents not in excess of thirty percent (30%) of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income.

(h) As used in this Section 8.26, the following terms has the following meanings:

(i) "Family" shall mean one or more individuals, whether or not related by blood or marriage; and

(ii) "40% AMI Families" shall mean Families whose annual income does not exceed forty percent (40%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(iii) "50% AMI Families" shall mean Families whose annual income does not exceed fifty percent (50%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(iv) "60% AMI Families" shall mean Families whose annual income does not exceed sixty percent (60%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(v) "70% AMI Families" shall mean Families whose annual income does not exceed seventy percent (70%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(vi) "80% AMI Families" shall mean Families whose annual income does not exceed eighty percent (80%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(i) The covenants set forth in this Section 8.26 shall run with the land and be binding upon any transferee.

(j) The City and Owner may enter into a separate agreement to implement the provisions of this Section 8.26.

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

9.01 General Covenants. The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations under this Agreement.

9.02 Survival of Covenants. All warranties, representations, and covenants of the City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties to this Agreement and be in effect throughout the Term of the Agreement.

SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

10.01 Employment Opportunity. Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of Developer operating on the Property (collectively, with Developer, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: 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. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 10.01 shall be a basis for the City to pursue remedies under the provisions of Section 15.02.

10.02 City Resident Construction Worker Employment Requirement. Developer agrees for itself and its successors and assigns, and shall contractually obligate its General Contractor and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, Developer, its General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

Developer may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

"Actual residents of the City" means persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

Developer, the General Contractor and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DPD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

Developer, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Developer, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of DPD, affidavits and other supporting documentation will be required of Developer, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of Developer, the General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

Developer shall cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Project.

10.03. MBE/WBE Commitment. Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that during the Project:

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following

percentages of the MBE/WBE Budget (as set forth in Exhibit B) shall be expended for contract participation by MBEs and by WBEs:

- (1) At least 26 percent by MBEs.
- (2) At least six percent by WBEs.

(b) For purposes of this Section 10.03 only, Developer (and any party to whom a contract is let by Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 10.03. In accordance with Section 2-92-730, Municipal Code, Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

(d) Developer shall deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining Developer's compliance with this MBE/WBE commitment. Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by Developer, on five Business Days' notice, to allow the City to review Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, Developer shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code, as applicable.

(f) Any reduction or waiver of Developer's MBE/WBE commitment as described in this Section 10.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code, as applicable.

(g) Before starting the Project, Developer shall be required to meet with the City's monitoring staff with regard to Developer's compliance with its obligations under this Section 10.03. The General Contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, Developer shall submit the documentation required by this Section 10.03 to the City's monitoring staff, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (viii) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that Developer is not complying with its obligations under this Section 10.03, shall, upon the delivery of written notice to Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to Developer to halt the Project, (2) withhold any further payment of any City Funds to Developer or the General Contractor, or (3) seek any other remedies against Developer available at law or in equity.

SECTION 11. ENVIRONMENTAL MATTERS

The Developer Parties have provided the City with a Phase I Environmental Site Assessment ESA compliant with ASTM E-1527-21 ("Phase I ESA") prior to and conducted, or updated, within 180 days prior to the conveyance of the Property.

The Phase I ESA did not identify any Recognized Environmental Conditions ("RECs").

The Developer shall cooperate and consult with the City at all relevant times (and in all cases upon the City's request) with respect to environmental matters. 2FM shall have the right to review and approve the sufficiency of the Phase I and Phase II ESAs, if applicable. The City must be named in a reliance letter for all environmental assessment reports produced concerning the Property.

Applicant/Grantee acknowledges that, except in the case of information specifically designated by the Applicant/Grantee to be treated confidentially as a trade secret or secret process, the City may make environmental assessments, hazardous material building surveys, Illinois Environmental Protection Agency site remediation program submittals, or similar environmental documents relating to the property publicly available, and Applicant/Grantee consents to the City's publication of those documents.

Developer will conduct a Hazardous Building Material Survey of the Site prior to conducting any work that could constitute renovation, demolition, or abatement under the Environmental Laws ("abatement work") on or within an existing physical structure located on the Property. The Hazardous Building Material Survey shall include (but is not limited to):

- asbestos and lead-based paint surveys,
- testing and visually inspecting and, as necessary, testing the Property to determine the presence and location of polychlorinated-biphenyl (PCB)-containing equipment and materials (such as lighting ballasts, switchgears, transformers, and hydraulic fluids),
- mercury-containing equipment and materials (mercury lamps, thermostats, switches, thermometers, regulators, and gauges),
- radioactive material-containing equipment and/or waste,
- medical wastes (such as biological or infectious wastes, hazardous chemicals, and/or wastes),
- refrigerants such as chlorofluorocarbons (CFCs),
- large appliances or equipment,
- mold,
- or any other materials that may require special handling or disposal during or after renovation, demolition, or abatement work.

The Hazardous Building Material Survey must discuss each of the Hazardous Building Materials listed above and state whether or not they were identified. The Hazardous Building Material Survey must document the type, location, quantity, and condition of each Hazardous Building Material that is identified.

Any Hazardous Building Materials that will be impacted by renovation or demolition activities, or are in poor or unstable condition, must be properly abated. A report documenting the Hazardous Building Material Survey results and an abatement plan shall be submitted to the City for review prior to beginning any renovation, demolition, or abatement work. Please note that abatement does not necessarily require removal and disposal of materials. Alternative methods to stabilize or prevent access to materials may be utilized if appropriate.

The Developer will incorporate the results of the Hazardous Building Material Survey into its Project documents and perform abatement work as part of the Project in accordance with all Environmental Laws. A report documenting the completion of the abatement work shall be submitted to the City prior to approval of the Property for occupancy. If abatement work activities are not deemed sufficient by the City, the Developer shall continue work at their own expense until approved.

Applicant/Grantee acknowledges that, except in the case of information specifically designated by the Applicant/Grantee to be treated confidentially as a trade secret or secret process, the City may make environmental assessments, hazardous material building surveys, Illinois Environmental Protection Agency Site Remediation Program submittals, or similar environmental documents relating to the property publicly available, and Applicant/Grantee consents to the City's publication of those documents.

Without limiting any other provisions hereof, Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of Developer: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other

real property in which Developer, or any person directly or indirectly controlling, controlled by or under common control with Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by Developer), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or Developer or any of its Affiliates under any Environmental Laws relating to the Property.

SECTION 12. INSURANCE

Developer Parties must provide and maintain, at Developer Parties' own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

(a) Before execution and delivery of this Agreement.

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per-occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(b) Construction. Before the construction of any portion of the Project, Developer will cause its architects, contractors, subcontractors, project managers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide cause to be provided with respect to the operations that Contractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) All Risk /Builders Risk

When Developer undertakes any construction, including improvements, betterments, and/or repairs, Developer must provide or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$ 1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(vii) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, Developer must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction:

(i) All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(d) Other Requirements:

Developer Parties must furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent before closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer Parties is not a waiver by the City of any requirements for Developer to obtain and maintain the specified coverages. Developer Parties shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer Parties of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate agreement until proper evidence of insurance is provided.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Developer Parties and Contractors.

Developer Parties hereby waive and agree to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer Parties in no way limit Developer Parties' liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by Developer Parties under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Developer Parties are a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Developer Parties must require Contractor and subcontractors to provide the insurance required herein, or Developer Parties may provide the coverages for Contractor and subcontractors. All Contractors and subcontractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If Developer Parties any Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

SECTION 13. INDEMNIFICATION

13.01 General Indemnity. Developer agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnites") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnites in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnites shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnites in any manner relating or arising out of:

(i) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(ii) Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement, any official statement, limited offering memorandum or private placement memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by Developer or any Affiliate Developer or any agents, employees, contractors or persons acting under the control or at the request of Developer or any Affiliate of Developer; or

(iv) Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating to this Agreement;

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 13.01 shall survive the termination of this Agreement.

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. Developer Parties shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at Developer's expense. Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer with respect to the Project.

14.02 Inspection Rights. Upon three (3) business days' notice, Developer Parties shall permit any authorized representative of the City to access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

SECTION 15. DEFAULT AND REMEDIES

15.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by a Developer Party, as applicable, hereunder :

(a) a Developer Party fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such party under this Agreement or any related agreement;

(b) a Developer Party fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such party under any other agreement with any person or entity if such failure may have a material adverse effect on such party's business, property, assets, operations or condition, financial or otherwise;

(c) a Developer Party makes or furnishes to the City any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted under this Agreement, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against a Developer Party or for the liquidation or reorganization of a Developer Party, or alleging that a Developer Party is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer Party's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving a Developer Party; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for a Developer Party, for any substantial part of Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of a Developer Party; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

(g) any judgment or order is entered against a Developer Party and remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

(h) an event of default occurs under the Lender Financing, if any, which default is not cured within any applicable cure period;

(i) the dissolution of Owner or Developer;

(j) a criminal proceeding (other than a misdemeanor) is instituted in any court against a Developer Party or any natural person who owns a material interest in a Developer Party and is not dismissed within thirty (30) days, or Developer Party or any natural person who owns a material interest in Developer Party is indicted for any crime (other than a misdemeanor);

(k) before the expiration of the Term of the Agreement, a majority of the ownership interests of Owner are sold or transferred (other than a Permitted Transfer or a sale or transfer to an Affiliate of Owner) without the prior written consent of the City;

(l) Developer Parties or any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to Developer Party fails to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code; such failure shall render this Agreement voidable or subject to termination, at the option of the Chief Procurement Officer;

(m) failure to provide the City with an Annual Compliance Report within sixty (60) days of when it is due, as set forth in Section 8.20; or

(n) Developer Parties fail to obtain the Certificate prior to the third anniversary of the Closing Date.

For purposes of Sections 15.01(i) and 15.01(j), a person with a material interest in Developer shall be one having a direct or indirect beneficial interest (including ownership) exceeding 10% of Developer.

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreements to which the City and Developer are or shall be parties, suspend disbursement of City Funds, place a lien on the Project in the amount of City Funds paid and/or seek reimbursement of any City Funds paid, as set forth in this Section 15.02 below. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to damages, injunctive relief or the specific performance of the agreements contained in this Agreement. Upon the occurrence of an Event of Default under Section 8.06, Developer shall be obligated to repay to the City all previously disbursed City Funds.

Upon the occurrence of an Event of Default under Section 15.01(m), for which neither notice nor opportunity for cure shall be provided, Developer shall be obligated to pay to the City the amount of \$10,000 as liquidated damages, and not as a penalty, which such payment shall be required no more often than once per calendar year. Any payment of liquidated damages by Developer shall not relieve Developer of its obligation under Section 8.20.

Upon the occurrence of an Event of Default because of failure to comply with Section 8.22, (Sustainable Development Policy), the City's remedy shall be the right to reduce the amount of City Funds by \$250,000.

15.03 Curative Period. In the event Developer shall fail to perform a monetary covenant which Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event Developer shall fail to perform a non-monetary covenant which Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, Developer shall not be deemed to have committed an Event of Default under this Agreement if it has started to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

15.04 Right to Cure by Investor Member and/or Lenders. In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in the termination of this Agreement, the cancellation, suspension, or reduction of any payment due from the City under this Agreement, the City shall send written notice of such intended exercise to the parties identified in Section 17 and the Investor Member and any lender providing Lender Financing, if any, shall have the right (but not the obligation) to cure such an Event of the Default within the cure periods set forth below, prior to exercising any remedies under the this Agreement.

(a) if the Event of Default is a monetary default, any party entitled to cure such default may cure it within 30 days after the expiration of the cure period, if any, granted to Developer with respect to such monetary default; and

(b) if the Event of Default is of a non-monetary nature, any party entitled to cure such default shall have the right to cure it within 30 days after the expiration of the cure period, if any, granted to Developer with respect to such non-monetary default; provided, however, that if such non-monetary default is not reasonably capable of being cured by any lender providing Lender Financing, if any, within such 30-day period, such period shall be extended for such reasonable period of time agreed to by the City as may be necessary to cure such default, provided that the party seeking such cure must diligently and continuously prosecute the cure of such default until the same has been cured and, if possession of the Project is necessary to effect such cure, the party seeking such cure must have instituted appropriate legal proceedings to obtain possession to the extent such party has the right to do so.

SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date of this Agreement with respect to the Property or any portion thereof that were made before or on the date of this Agreement in connection with Lender Financing, if any, and which are Permitted Liens are referred to in this Agreement as the "Existing Mortgages." Any mortgage or deed of trust that Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to in this Agreement as a "New Mortgage." Any New Mortgage that Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to in this Agreement as a "Permitted Mortgage." The City and Developer agree as follows:

(a) If a mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest under this Agreement in accordance with Section 18.14 (Assignment), the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) If any mortgagee shall succeed to Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest under this Agreement in accordance with Section 18.14 (Assignment), the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "Developer" under this Agreement; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of Developer which accrued before such party succeeded to the interest of Developer under this Agreement, in which case Developer shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of Developer's interest under this Agreement, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) During the Reporting Period, Developer shall not execute a New Mortgage with respect to the Property or any portion of the Property without the prior written consent of the Commissioner of DPD..

SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required under this Agreement shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified mail, return receipt requested.

If to the City: City of Chicago Department of Planning and Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602 Attention: Commissioner	If to Developer Parties: _____ _____ _____ Attention: _____
With Copies To: City of Chicago Department of Law 121 North LaSalle Street, Room 600 Chicago, Illinois 60602 Attention: Finance and Economic Development Division	With Copies To: _____ _____ _____ Attention: _____

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and its Exhibits may not be amended or modified without the prior written consent of the parties to this Agreement; provided, however, that the City, in its sole discretion, may amend, modify, or supplement the Redevelopment Plan without the consent of any party to this Agreement. No material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in Sections 10.02 and 10.03) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by Developer by more than ninety (90) days.

18.02 Entire Agreement. This Agreement (including each Exhibit attached to this Agreement, which is hereby incorporated into this Agreement by reference) constitutes the entire agreement between the parties to this Agreement and it supersedes all prior agreements, negotiations, and discussions between the parties relative to the subject matter of this Agreement.

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

18.04 Further Assurances. Developer agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

18.05 Waiver. Waiver by the City or Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or Developer in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms of this Agreement. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties to this Agreement, shall constitute a waiver of any such parties' rights or of any obligations of any other party to this Agreement as to any future transactions.

18.06 Remedies Cumulative. The remedies of a party under this Agreement are cumulative and the exercise of any one or more of the remedies provided for in this Agreement shall not be construed as a waiver of any other remedies of such party unless specifically so provided in this Agreement.

18.07 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

18.08 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

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

18.10 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinance(s) shall prevail and control.

18.11 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

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

18.13 Approval. Wherever this Agreement provides for the approval or consent of the City, DPD or the Commissioner, or any matter is to be to the City's, DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given, or determined by the City, DPD or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or DPD in making all approvals, consents, and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

18.14 Assignment. Developer may not sell, assign, or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, as described in Section 7.02 (Effect of Issuance of Certificate; Continuing Obligations), for the Term of the Agreement. Developer consents to the City's sale, transfer, assignment, or other disposal of this Agreement at any time in whole or in part.

18.15 Binding Effect. This Agreement shall be binding upon Developer, the City and their respective successors and permitted assigns (as provided in this Agreement) and shall inure to the benefit of Developer, the City and their respective successors and permitted assigns (as provided in this Agreement). Except as otherwise provided in this Agreement, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

18.16 Force Majeure. Neither the City nor Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations under this Agreement. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

18.17 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if Developer is required to provide notice under the WARN Act, Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer

to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth in this Agreement.

18.18 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party to this Agreement agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois, and the United States District Court for the Northern District of Illinois.

18.19 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

18.20 Business Relationships. Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code)(a "Financial Interest"), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a business relationship that creates a Financial Interest, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship that creates a Financial Interest, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

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

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

[OWNER]

By: _____

Its: _____

[DEVELOPER]

By: _____

Its: _____

CITY OF CHICAGO

By: _____

Commissioner
Department of Planning and Development

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of _____, an Illinois [corporation] (the "Owner"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by the [Board of Directors] of Owner, as his/her free and voluntary act and as the free and voluntary act of Owner, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ____ day of _____, ____.

Notary Public

My Commission Expires_____

(SEAL)

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of _____, an Illinois [corporation] (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by the [Board of Directors] of Developer, as his/her free and voluntary act and as the free and voluntary act of Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ____ day of _____, ____.

Notary Public

My Commission Expires_____

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ Commissioner of the Department of Planning and Development of the City of Chicago (the "City"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument pursuant to the authority given to him/her by the City, as his/her free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ____th day of _____, ____.

Notary Public

My Commission Expires _____

Exhibit A

Legal Description of the Property

[Subject to Survey and Title Insurance]

Property Address: 79 W. Monroe Street, Chicago, Illinois

Property identification numbers (PINs):

17-16-212-001-0000

17-16-212-002-0000

17-16-212-003-0000

17-16-212-004-0000

17-16-212-005-0000

17-16-212-006-0000

Legal Description: LOTS 7 THROUGH 12 IN COUNTY CLERK'S DIVISION OF BLOCK 120, ALL IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

Exhibit B

Project Budgets (Project Budget, MBE/WBE Budget and TIF-Funded Improvements)¹

PROJECT BUDGET	
<i>Building Cost</i>	\$9,750,000
<i>Transfer Stamps</i>	\$117,000
<i>Net Construction Costs</i>	\$36,279,489
<i>General Conditions</i>	\$1,846,626
<i>Overhead</i>	\$725,590
<i>Profit</i>	\$897,555
<i>Furniture, Fixtures, & Equip't</i>	\$285,000
<i>GC Insurance</i>	\$909,607
<i>Other Construction (Design and Historic Costs Contingency)</i>	\$1,813,974
<i>Construction Contingency</i>	\$4,156,323
<i>Environmental Contingency</i>	\$75,000
<i>Commercial Construction</i>	\$101,700
<i>Architect - Design</i>	\$1,476,310
<i>Engineering Fees</i>	\$146,168
<i>Blueprints & Reproductions</i>	\$5,500
<i>PNA Report</i>	\$5,000
<i>Permit Expediter</i>	\$25,000
<i>As-Is Plats & Surveys</i>	\$10,000
<i>Legal - Organizational</i>	\$250,000
<i>Consultant - Historic</i>	\$50,000
<i>Consultant - Financial</i>	\$25,000
<i>Consultant - TIF</i>	\$50,000
<i>Appraisal</i>	\$16,000
<i>Market Study</i>	\$20,000
<i>Phase I Environ. Report</i>	\$24,000
<i>Title & Recording Fees</i>	\$65,000
<i>Other Professional Fees</i>	\$89,434
<i>Application Fees</i>	\$2,500
<i>Lender Legal Fees</i>	\$25,000
<i>Liability Insurance</i>	\$515,518
<i>Real Estate Taxes</i>	\$1,835,151
<i>Model Units</i>	\$100,000
<i>Other Marketing & Leasing</i>	\$125,000
<i>Developer Fee</i>	\$1,246,525
<i>Construction Admin.</i>	\$442,103

¹ The MBE/WBE budget is an estimate calculated as of the Closing Date. The final percentages will be based on the final hard construction costs of the Project.

<i>Lease-Up Reserve</i>	\$120,586
<i>Operating Reserve</i>	\$567,061
Grand Total Development Cost	\$64,194,720

MBE/WBE BUDGET

Project Hard Costs	<u>\$47,090,864</u>
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Project MBE/WBE Total Budgets	<u><u>\$47,090,864</u></u>
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Project MBE Total at 26%	\$12,243,625
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Project WBE Total at 6%	\$2,825,452
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TIF-FUNDED IMPROVEMENTS

Category	Project Budget*	% TIF Eligible	TIF Eligible Cost
Rehabilitation	\$39,749,260	100%	\$39,749,260
		TOTAL	\$39,749,260

Notwithstanding the total of TIF-Funded Improvements or the amount of TIF-eligible costs, the assistance to be provided by the City is limited to the amount described in Section 4.03.

Exhibit C

Requisition Form

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The affiant, _____, of _____, a
_____ (the "Developer"), hereby certifies that with respect to the
_____ Redevelopment Agreement between Developer and the City of Chicago
dated _____, _____ (the "Agreement"):

A. Expenditures for the Project, in the total amount of \$ _____, have been made.

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Funded Improvements for the Project reimbursed by the City to date:

\$ _____

C. Developer requests reimbursement for the following cost of TIF-Funded Improvements:

\$ _____

D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.

E. Developer hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached certificate, the representations and warranties contained in the Agreement are true and correct and Developer is in compliance with all applicable covenants contained in the Agreement.

2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

All capitalized terms which are not defined in this Requisition Form has the meanings given such terms in the Agreement.

[Developer]

By: _____

Name

Title: _____

Subscribed and sworn before me this ____ day of _____

My commission expires: _____

Agreed and accepted:

Name

Title: _____

City of Chicago

Department of Planning and Development

[Exhibit D]
[List of Prior Expenditures]
[Not attached for Ordinance]

**[Exhibit E]
[Permitted Liens]
[Not attached for Ordinance]**