

6. No action of, or filing with, any governmental or public body is required to authorize, or is otherwise required for the validity of, the execution, delivery and performance of any of the Agreement.

This opinion is furnished for your benefit and may be relied upon by you and any such other party in connection with the Agreement, but may not be delivered to or relied upon by any other person or entity without written consent from the undersigned.

Very truly yours,

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AMENDMENT OF PRIOR ORDINANCE FOR RESTRUCTURING OF LOAN AGREEMENT WITH, CONVEYANCE OF CITY PROPERTY TO AND WAIVER OF PERMIT FEES FOR TRC SENIOR VILLAGE I, N.F.P. FOR CONSTRUCTION OF AFFORDABLE SENIOR HOUSING AT 346 E. 53<sup>RD</sup> ST.

[O2009-3844]

The Committee on Finance submitted the following report:

CHICAGO, June 30, 2009.

*To the President and Members of the City Council:*

Your Committee on Finance, having had under consideration an ordinance authorizing the amending of the previously executed redevelopment agreement and loan agreement with TRC Senior Village I, N.F.P., amount of loan not to exceed: \$1,900,000, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*

On motion of Alderman Burke, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

Yeas-- Aldermen Flores, Fioretti, Dowell, Preckwinkle, Hairston, Lyle, Jackson, Harris, Beale, Pope, Balcer, Cárdenas, Olivo, Burke, Foulkes, Thompson, Thomas, Lane, Rugai, Cochran, Brookins, Muñoz, Zalewski, Dixon, Solis, Burnett, E. Smith, Carothers, Reboyras, Suarez, Waguespack, Mell, Austin, Colón, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Reilly, Daley, Tunney, Levar, Shiller, Schulter, M. Smith, Moore, Stone -- 49.

Nays -- None.

Alderman Carothers moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, By virtue of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Chicago (the "City") is a home rule unit of local government and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, The City Council of the City (the "City Council") adopted an ordinance on July 30, 2008 (the "Prior Ordinance") which is published at pages 33846 -- 33926 of the *Journal of the Proceedings of the City Council of the City of Chicago*, authorizing the City to execute a proposed redevelopment agreement with TRC Senior Village I, N.F.P. (the "Developer") in connection with a project to be constructed in the City to enable the Developer to pay a portion of the costs of construction of an approximately seventy (70) unit senior citizen multi-family housing project (the "Project") to be located generally at 43 -- 59 East Pershing Road, and also known as 3901 South Wabash Avenue, in Chicago, Illinois (the "Prior Property"); and

WHEREAS, The Prior Ordinance also authorized the City to provide a loan to the Developer in connection with the financing of the Project in an amount not to exceed One Million Six Hundred Thousand Dollars (\$1,600,000); and

WHEREAS, If the Project does not relocate to a new site, due to ground water contamination uncovered during a Phase II environmental site assessment performed on the Prior Property, the Project no longer qualifies for the Section 202 United States Department of Housing and Urban Development financing needed to finance a portion of the Project; and

WHEREAS, The Developer has requested and the City has agreed to convey City-owned property generally located at 346 East 53<sup>rd</sup> Street, in Chicago, Illinois to the Developer for the



Project to use as a relocated site, and, in addition, due to a decrease in grant funds available in connection with financing the Project, the Developer has requested, and the City has agreed, to increase the amount of its loan to the Developer to an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000); and

WHEREAS, The proposed modifications to the financing structure and the relocation of the Project require an amendment to the Prior Ordinance; now, therefore,

*Be It Ordained by the City Council of the City of Chicago:*

1. Incorporation Of Recitals. The recitals contained in the preambles to this amendatory ordinance are hereby incorporated into this amendatory ordinance by this reference.

2. Amendments. The Prior Ordinance is hereby amended by deleting certain language by ~~strikeout~~ and inserting the underscored language, as follows:

"Ordinance.

Whereas, The City of Chicago (the "City"), a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, has heretofore found and does hereby find that there exists within the City a serious shortage of decent, safe and sanitary rental housing available to persons of low- and moderate-income; and

Whereas, The City has determined that the continuance of a shortage of affordable rental housing is harmful to the health, prosperity, economic stability and general welfare of the City; and

Whereas, The Congress of the United States has enacted the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701, et seq., authorizing, inter alia, the HOME Investment Partnerships Program (the "HOME Program") pursuant to which the United States' Department of Housing and Urban Development ("H.U.D.") is authorized to make funds (the "HOME Funds") available to participating jurisdictions to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing; and

Whereas, The City has received an allocation from H.U.D. of HOME Funds to make loans and grants for the purposes enumerated above and such HOME Funds are administered by the City's Department of Housing (~~"D.O.H."~~) Community Development ("D.C.D."); and

Whereas, The City may have available certain funds in Corporate Fund Number 100 (the "Corporate Funds") to be used as the local match of HOME Funds as required under the HOME Program; and

Whereas, The City may have available to it certain funds (the "Program Income") derived from repayments to the City of HOME Funds and/or other returns on the investment of HOME Funds; and



Whereas, ~~D.O.H.~~ D.C.D. has preliminarily reviewed and approved the making of a loan to TRC Senior Village I, N.F.P., an Illinois not-for-profit corporation (the "Borrower"), in an amount not to exceed \$1,690,000 (the "Loan"), to be funded from HOME Funds, Corporate Funds, and/or Program Income pursuant to the terms and conditions set forth in Exhibit 1 attached hereto and made a part hereof to undertake the project described in Exhibit 1 (the "Project"); and

Whereas, Pursuant to an ordinance, as amended, adopted by the City Council ("City Council") of the City on ~~November 4, 1998~~ July 21, 2004 and published at pages ~~80642 27705~~ through ~~80758 27826~~ of the *Journal of the Proceedings of the City Council of the City of Chicago* (the "*Journal*") of such date, a certain redevelopment plan and project (the "Plan") for the Bronzeville 47<sup>th</sup>/State redevelopment project area (the "Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1, et seq.) (the "Act"); and

Whereas, Pursuant to an ordinance, as amended, adopted by the City Council on ~~November 4, 1998~~ July 21, 2004 and published at pages ~~80768 27827~~ through ~~80778 27830~~ of the *Journal* of such date, the Area was designated as a redevelopment project area pursuant to the Act; and

Whereas, Pursuant to an ordinance (the "T.I.F. Ordinance") adopted by the City Council on ~~November 4, 1998~~ July 21, 2004 and published at pages ~~80758 27831~~ through ~~80768 27844~~ of the *Journal* of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Plan; and

~~Whereas, On January 9, 2008, the City Council of the City enacted an ordinance published in the *Journal* for such date at pages 18725 through 18728 (the "Conveyance Ordinance") which authorized the conveyance by the City of certain parcels of land located at 43--59 East Pershing Road and also known as 3901 South Wabash Avenue in Chicago, Illinois (the "City Land") in the Redevelopment Area to the Borrower for the construction of the Project (as defined on Exhibit 1 hereto), for a purchase price of One and no/100 Dollars (\$1.00,) which is approximately One Million Nine Hundred Forty-nine Thousand Nine Hundred Ninety-nine Dollars (\$1,949,999) less than its fair market value; and~~

Whereas, The City is the owner of the real Property commonly known as approximately 346 East 53<sup>rd</sup> Street, 5243 and 5247 South Calumet Avenue, Chicago, Illinois (the "City Land"), which is located in the Area; and

Whereas, Borrower has submitted a proposal to D.C.D. to purchase the City Land for One and no/100 Dollars (\$1.00), which is approximately One Million One Hundred Seventy-nine Thousand Nine Hundred Ninety-nine Dollars (\$1,179,999) less than its fair market value for construction of the Project; and



Whereas, Pursuant to Section 5/11-74.4-8(b) of the Act and the T.I.F. Ordinance, incremental taxes ("Incremental Taxes") are deposited from time to time in the "Bronzeville 47<sup>th</sup>/State Redevelopment Project Area Special Tax Allocation Fund" established pursuant to the T.I.F. Ordinance (the "Fund"); and

Whereas, The Borrower has proposed to undertake the Project in accordance with the Plan and pursuant to the terms and conditions of a proposed redevelopment agreement to be executed by the Borrower and the City, to be financed in part by Incremental Taxes; and

Whereas, Pursuant to Resolution 089-CDC-31 adopted by the Community Development Commission of the City of Chicago (the "Commission") on ~~April 15, 2008~~ May 12, 2009, the Commission authorized the City's Department of ~~Planning and~~ Community Development ("D.P.C.D.") to negotiate a redevelopment agreement with the Borrower for the Project and to recommend that the Borrower be designated as the developer for the Project; and

Whereas, The Commission has recommended that the Borrower be designated as the developer for the Project and that D.P.C.D. be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Borrower, and convey the City Land to the Borrower, for the Project; and

Whereas, On January 16, 2002, the City Council enacted an ordinance published in the *Journal of the Proceedings of the City Council of the City of Chicago* for such date at pages 77362 through 77366, inclusive, as amended by an ordinance adopted by City Council on September 4, 2003 and published in the *Journal of the Proceedings of the City Council of the City of Chicago* for such date at pages 6475 through 6626, inclusive, which authorized the establishment of a program (as supplemented, amended and restated from time to time, the "Donation Tax Credit Program") to be implemented by ~~D.O.H.~~ D.C.D. in connection with the use of certain tax credits authorized by the Illinois General Assembly pursuant to Public Act 92-0491 (as supplemented, amended and restated from time to time) for donations made in connection with affordable housing projects; and

Whereas, The conveyance of the City Land by the City to the Borrower in connection with the Project may qualify under the Donation Tax Credit Program as an eligible donation, and may generate certain additional proceeds for the Project, but the receipt of such donations and proceeds is not a condition to the making of the Loan; and

Whereas, The Project is necessary for the redevelopment of the Area; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

Section 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

Section 2. Upon the approval and availability of the Additional Financing as shown in Exhibit 1 hereto, and the closing of the Redevelopment Agreement (as defined in Section 5 below), the Commissioner of ~~D.O.H.~~ D.C.D. (the "~~D.O.H.~~ D.C.D. Commissioner") and a designee of the ~~D.O.H.~~ D.C.D. Commissioner are each hereby authorized, subject



to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Loan and the terms and program objectives of the HOME Program. The ~~D.O.H.~~ D.C.D. Commissioner is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Loan which do not substantially modify the terms described in Exhibit 1 hereto. Upon the execution and receipt of proper documentation, the ~~D.O.H.~~ D.C.D. Commissioner is hereby authorized to disburse the proceeds of the Loan to the Borrower.

Section 3. In connection with the Loan by the City to the Borrower, the City shall waive those certain fees, if applicable, imposed by the City with respect to the Project (as described in Exhibit 1 hereto) and as more fully described in Exhibit 2 attached hereto and made a part hereof. The Project shall be deemed to qualify as "Affordable Housing" for purposes of Chapter 16-18 of the Municipal Code of Chicago. Section 2-44-090 of the Municipal Code of Chicago shall not apply to the Project or the Property (as such term is defined in Exhibit 1 hereto).

Section 4. The Borrower is hereby designated as the developer for the Project pursuant to Section 5/11-74.4-4 of the Act.

Section 5. The D.C.D. Commissioner of ~~D.P.D.~~ (the "~~D.P.D.~~ Commissioner") or a designee of the ~~D.P.D.~~ D.C.D. Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the redevelopment agreement (the "Redevelopment Agreement") between the Borrower and the City substantially in the form attached hereto as Exhibit 3, with such modifications as are required under the H.U.D. Section 202 Supportive Housing for the Elderly program, and such other supporting documents as may be necessary to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

Section 6. The City Council of the City hereby finds that the City is authorized to pay the Borrower Seven Hundred Twenty-five Thousand Dollars (\$725,000) from Incremental Taxes deposited in the General Account of the Fund to finance a portion of the eligible costs included within the Project in accordance with the terms and conditions of the Redevelopment Agreement.

Section 7. Pursuant to the T.I.F. Ordinance, the City has created the Fund. The Authorized Officer of the City is hereby directed to maintain the Fund as a segregated interest-bearing account, separate and apart from the City's Corporate Fund or any other fund of the City. Pursuant to the T.I.F. Ordinance, all Incremental Taxes received by the City for the Area shall be deposited into the Fund. Monies on deposit in the Fund may be invested as allowed under Section 2-32-520 of the Municipal Code of the City of Chicago.



Section 8. The City hereby further approves the conveyance of the City Land as a donation to the Borrower from the City under the Donation Tax Credit Program in connection with the Project. The ~~D.O.H.~~ D.C.D. Commissioner is hereby authorized to transfer the tax credits allocated to the City under the Donation Tax Credit Program in connection with the conveyance of the City Land to an entity satisfactory to the ~~D.O.H.~~ D.C.D. Commissioner on such terms and conditions as are satisfactory to the Authorized Officer (the "Transfer"). The proceeds, if any, received by the City in connection with the Transfer are hereby appropriated, and the ~~D.O.H.~~ D.C.D. Commissioner is hereby authorized to use such proceeds to make a grant to the Borrower, in her sole discretion, for use in connection with the Project (the "Grant"). The ~~D.O.H.~~ D.C.D. Commissioner is hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Transfer and the Grant. Upon the execution and receipt of proper documentation, the Authorized Officer is hereby authorized to disburse the proceeds of the Grant to the Borrower.

Section 9. The Mayor, the Chief Financial Officer, the City Comptroller, the City Clerk, the D.P.C.D. Commissioner (or his or her designee), ~~the D.O.H. Commissioner (or his or her designee)~~, and the other officers of the City are authorized to execute and deliver on behalf of the City such other documents, agreements and certificates and to do such other things consistent with the terms of this ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this ordinance.

Section 10. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

Section 11. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

Section 12. This ordinance shall be effective as of the date of its passage and approval.

Exhibits 1, 2 and 3 referred to in this ordinance read as follows:

Exhibit 1.  
(To Amendatory Ordinance)

Borrower: TRC Senior Village I, N.F.P., an Illinois not-for-profit corporation (the "Borrower").

Project: Construction of a building to be located at approximately ~~43--59 East Pershing Road~~ and also known as ~~3901 South Wabash Avenue~~ 346 East 53<sup>rd</sup> Street, Chicago, Illinois (the "Property") and of approximately seventy (70) dwelling units contained therein as one-bedroom units for low- and moderate-income senior citizens and one (1) two-bedroom dwelling unit as a manager's unit, ~~1,000~~ an approximately 946 square foot community room/multi-purpose room and approximately ~~245~~ parking spaces.

Loan: Source: HOME Program/Corporate Funds/Program Income.

Amount: Not to exceed \$1,6900,000.

Term: Not to exceed 42 years.

Interest: 0% per annum.

Security: Non-recourse loan; mortgage on the Property junior to the hereinafter defined First Mortgage.

Additional Financing:

1. Amount: \$10,164,798.
- Term: 42 years.
- Source: H.U.D. Section 202 Supportive Housing for the Elderly capital advance grant or another entity acceptable to the D.C.D. Commissioner.
- Interest: Not to exceed 6%.
- Security: First mortgage on the Property (the "First Mortgage").
2. Amount: \$304,425.
- Term: N/A.
- Source: H.U.D. Section 202 Demonstration Planning Grant Funds or another entity acceptable to the ~~D.O.H.~~ D.C.D. Commissioner.



- |    |           |   |
|----|-----------|---|
|    | Interest: | N/A.  |
|    | Security: | N/A.  |
| 3. | Amount:   | \$208,607.  |
|    | Source:   | Illinois Department of Commerce and Economic Opportunity through its EEPS ComEd grant program and its Energy Efficiency Trust Fund grant program.   |
|    | Term:     | N/A.  |
|    | Interest: | N/A.  |
|    | Security: | N/A.  |
| 4. | Amount:   | <del>\$848,250</del> <u>513,300.</u>  |
|    | Source:   | City's grant to the Borrower of donations tax credit sale proceeds it received as a result of the transfer of such credits from an allocation made by the Illinois Housing Development Authority. |
| 5. | Amount:   | \$181,250*.   |
|    | Source:   | Borrower's Equity.  |
|    | Term:     | N/A.  |
|    | Interest: | N/A.  |
|    | Security: | N/A.  |

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\* To be repaid by the T.I.F. funds as set forth in the Redevelopment Agreement.

Exhibit 2.  
(To Amendatory Ordinance)

Fee Waivers.

Department Of Buildings.

Waiver of Plan Review, Permit and Inspection Fees:

A. Building Permit:

Zoning.

Construction/Architectural/Structural.

Internal Plumbing.

H.V.A.C.

Water for Construction.

Smoke Abatement.

B. Electrical Permit:

Service and Wiring.

C. Elevator Permit (if applicable).

D. Wrecking Permit (if applicable).

E. Fencing Permit (if applicable).

F. Fees for the review of building plans for compliance with accessibility codes by the Mayor's Office for People with Disabilities imposed by Section 13-32-310(2) of the Municipal Code of Chicago.

Department Of Water Management.

Tap Fees.



Cut and Seal Fees.  
(Fees to purchase B-boxes and remote read-outs are not waived.)

Permit (connection) and Inspection Fees.

Sealing Permit Fees.

Department Of Transportation.

Street Opening Fees.

Driveway Permit Fees.

Use of Public Way Fees.

Exhibit 3.  
(To Amendatory Ordinance)

See attached."

3. Separability. If any provision of this amendatory ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any remaining provisions of this amendatory ordinance.

4. Inconsistent Provisions. All ordinances, resolutions, motions or orders in conflict with this amendatory ordinance are hereby repealed to the extent of such conflict, provided that the Prior Ordinance, except as amended by this amendatory ordinance, shall remain in full force and effect.

5. No Impairment. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code, or part thereof, is in conflict with the provisions of this amendatory ordinance, the provisions of this amendatory ordinance shall be controlling.

6. Effective Date. This amendatory ordinance shall be in full force and effect immediately upon its passage.

Exhibit 3 referred to in this ordinance reads as follows:

*Exhibit 3.*  
(To Ordinance)

*TRC Senior Village I, N.F.P. Redevelopment Agreement.*

TRC Senior Village I, NFP Redevelopment Agreement (this "**Agreement**") is made as of this \_\_\_\_ day of \_\_\_\_\_, ~~2008~~, 2009, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of ~~Planning and Community~~ Development ("**DPDCD**"), and TRC Senior Village I, NFP, an Illinois not-for-profit corporation (the "**Developer**").

**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, the City Council of the City (the "**City Council**") adopted the following ordinances on ~~November 4, 1998~~ July 21, 2004: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Bronzeville 47<sup>th</sup>/State Tax Increment Financing Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Bronzeville 47<sup>th</sup>/State Tax Increment Financing Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Bronzeville 47<sup>th</sup>/State Tax Increment Financing Redevelopment Project Area" (the "**TIF Adoption Ordinance**") (items(1)-(3) collectively referred to herein as the "**TIF Ordinances**"). The redevelopment project area referred to above (the "**Redevelopment Area**") is legally described in Exhibit A hereto.



D. **The Project:** As further detailed in Recital G below, the Developer will acquire certain City property located within the Redevelopment Area at ~~43-59 East Pershing Road and also known as 3901 South Wabash~~346 East 53<sup>rd</sup> Street, 5243 and 5247 South Calumet Avenue, Chicago, Illinois and legally described on Exhibit B hereto (the "Property"), and, within the time frames set forth in Section 3.01 hereof, shall commence and complete the construction of a seven-story rental building (the "Building") on the Property, which will include 70 dwelling units contained therein as one-bedroom rental units for low- and moderate-income elderly persons (defined as household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy), one two-bedroom dwelling unit as a manager's unit, 2425 parking spaces and ~~a 1,000~~ an approximately 946 square foot community/multi-purpose room (the "Facility"). The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. **Redevelopment Plan:** The Project will be carried out in accordance with this Agreement and the City of Chicago ~~Bronzeville~~47th/State Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan (the "Redevelopment Plan") attached hereto as Exhibit D.

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

G. **City Property Conveyance:** In accordance with an Ordinance enacted by the City Council of the City on ~~January 9, 2008~~[\_\_\_\_\_, 2009] and published in the Journal for such date at pages ~~48725~~[\_\_\_\_\_] through 48728, [\_\_\_\_\_], the City has agreed to convey the Property commonly known as ~~43-59 East Pershing Road~~346 East 53<sup>rd</sup> Street, 5243 and 5247 South Calumet Avenue in Chicago, Illinois in the Redevelopment Area to the Developer for the construction of the Project for a purchase price of \$1.00, which is approximately ~~\$1,949,999~~1,179,999 less than its fair market value.

H. **HUD Financing:** In addition to the Incremental Taxes for TIF-Funded Improvements and the bargain sale conveyance of the Property from the City, the Developer will receive a Capital Advance from the United States Department of Housing and Urban Development ("HUD") in the approximate amount of Ten Million One Hundred Sixty-Four Thousand Seven Hundred Ninety-Eight and No/100 Dollars (\$10,164,798.00) (the "Capital Advance") under the Section 202 Supportive Housing for the Elderly program, 12 U.S.C. Section 1701q, its implementing regulations published at 24 C.F.R. Part 981 and the applicable HUD Handbooks, notices, requirements and administrative directives (collectively, the "Section 202 Program").

I. **HUD Restrictions:** As a condition of the Capital Advance and to secure the Developer's obligations thereunder, HUD requires (i) that the Developer execute and record against the Property a Mortgage by the Developer in favor of HUD dated concurrently herewith (the "HUD Mortgage"), (ii) that the Property not be subject to any liens inferior or superior to the lien of the HUD Mortgage, except as expressly permitted by HUD, (iii) that the Developer execute and record against the Property a Use Agreement dated concurrently herewith, and a



Regulatory Agreement dated concurrently herewith (collectively, the Use Agreement and Regulatory Agreement are the "HUD Restrictions"); and (iv) that this Agreement be subordinate in all respects to the HUD Mortgage securing the Capital Advance, and each of the HUD Restrictions.

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

### SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

### 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:

"47th/State TIF Fund" shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

"Act" shall have the meaning set forth in the Recitals hereof.

"Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer.

~~"Bronzeville TIF Fund" shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.~~  
"Certificate" shall mean the Certificate of Completion of Construction described in Section 7.01 hereof.

"Change Order" shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budget as described in Section 3.03, Section 3.04 and Section 3.05, respectively.

"City Council" shall have the meaning set forth in the Recitals hereof.

"City Funds" shall mean the funds described in Section 4.03(b) hereof.

"Closing Date" shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

"Construction Contract" shall mean the HUD Lump Sum Construction Contract (HUD form 92442-CA), including the City Construction Rider attached thereto, all substantially in the form attached hereto as Exhibit E, to be entered into between the Developer and the General Contractor providing for construction of the Project.



**"Corporation Counsel"** shall mean the City's Office of Corporation Counsel.

~~**"DOH"** shall mean the City's Department of Housing.~~

**"Employer(s)"** shall have the meaning set forth in **Section 10** hereof.

**"Environmental Laws"** shall mean 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 of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560.

**"Equity"** shall mean funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in **Section 4.01** hereof, which amount may be increased pursuant to **Section 4.06** (Cost Overruns) or **Section 4.03(b)**.

**"Escrow"** shall mean the construction escrow established pursuant to the Escrow Agreement.

**"Escrow Agreement"** shall mean the Construction Loan Disbursement Agreement establishing a construction escrow, to be entered into as of the date hereof by the Title Company (or an affiliate of the Title Company), Developer, City, and HUD, among others.

**"Event of Default"** shall have the meaning set forth in **Section 15** hereof.

**"Facility"** shall have the meaning set forth in the Recitals hereof.

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

**"General Contractor"** shall mean the general contractor(s) hired by the Developer pursuant to **Section 6.01**.

**"Hazardous Materials"** shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.



**"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 Bronzeville47th/State TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

**"Lender Financing"** shall mean funds borrowed or grants and capital advances received by the Developer from lenders and irrevocably available to pay for Costs of the Project, in the amount set forth in Section 4.01 hereof.

**"MBE(s)"** has the meaning defined in Section 10.03.

**"MBE/WBE Program"** has the meaning defined in Section 10.03.

**"MBE/WBE Budget"** shall mean the budget as described in Section 10.03.

**"Municipal Code"** shall mean the Municipal Code of the City of Chicago.

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

**"Permitted Liens"** shall mean those liens and encumbrances against the Property and/or the Project set forth on Exhibit G hereto.

**"Plans and Specifications"** shall mean final 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 Expenditure(s)"** shall have the meaning set forth in Section 4.05(a) hereof.

**"Project"** shall have the meaning set forth in the Recitals hereof.

**"Project Budget"** shall mean the budget attached hereto as Exhibit H, showing the total cost of the Project by line item, furnished by the Developer to DPDDCD, in accordance with Section 3.03 hereof.

**"Property"** shall have the meaning set forth in the Recitals hereof.

**"Purchase Price"** shall have the meaning set forth in Section 3.14.

**"Recorded Affordability Document"** shall mean that certain City Regulatory Agreement entered into on the date hereof by the Developer and the City.

**"Redevelopment Area"** shall have the meaning set forth in the Recitals hereof.

**"Redevelopment Plan"** shall have the meaning set forth in the Recitals hereof.

**"Redevelopment Project Costs"** shall mean 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.



**"Requisition Form"** shall mean the document, in the form attached hereto as **Exhibit K**, to be delivered by the Developer to DPDDCD pursuant to **Section 4.04** of this Agreement.

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

**"Survey"** shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM urban survey of the Property dated within 90 days prior to the Closing Date, acceptable in form and content to the City, HUD (pursuant to HUD Survey Instructions and Report from 92457) and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City, HUD, Developer 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).

**"Term of the Agreement"** shall mean the period of time commencing on the Closing Date and ending on the later of: (a) any date to which DPDDCD and the Developer have agreed or (b) the date on which the Redevelopment Area is no longer in effect (through and including December 31, ~~2022~~ 2027).

**"TIF Adoption Ordinance"** shall have the meaning set forth in the Recitals hereof.

**"TIF-Funded Improvements"** shall mean 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 C** lists the TIF-Funded Improvements for the Project.

**"TIF Ordinances"** shall have the meaning set forth in the Recitals hereof.

**"Title Company"** shall mean Title Services, Inc., as agent for Stewart Title Guaranty Company.

**"Title Policy"** shall mean a title insurance policy in the most recently revised ALTA or equivalent form, showing the Developer as the insured, noting the recording of this Agreement as an encumbrance against the Property.

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

**"WBE(s)"** has the meaning defined in **Section 10.03**.

### SECTION 3. THE PROJECT

**3.01 The Project.** With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof: (i) commence construction no later than September 30, ~~2008~~, 2009, or such later time as may be permitted by HUD; and (ii) complete construction (as evidenced by the issuance of the Certificate of Completion by the City) no later than March 31, ~~2010~~, 2011, or such later time as may be permitted by HUD. The Developer shall promptly notify the City when construction has begun.



**3.02 Scope Drawings and Plans and Specifications.** The Developer has delivered the Scope Drawings and Plans and Specifications to DOHDCD and DOHDCD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DOHDCD as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations, including the Section 202 Program requirements. The Developer 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.** The Developer has furnished to DPDDCD, and DPDDCD has approved, a Project Budget showing total costs for the Project in the approximate amount of Thirteen Million Eight Hundred ~~Five~~Twenty-Six Thousand ~~Two~~One Hundred Thirty-~~Seven~~ Dollars (~~\$13,805,237~~13,826,130). The Developer hereby certifies to the City that (a) it has Lender Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPDDCD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

**3.04 Change Orders.** Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by the Developer to DPDDCD concurrently with the progress reports described in **Section 3.07** hereof; provided, that any Change Order relating to any of the following must be submitted by the Developer to DOHDCD for DOHDCD's prior written approval: (a) a five percent reduction or increase in the square footage of the Facility; (b) a change in the use of the Property; (c) a delay of more than 3 months in the completion of the Project; or Change Orders costing more than \$25,000 each, to an aggregate amount of \$100,000. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DOHDCD's written approval (to the extent required in this section). The Construction Contract, and each contract between the Developer and any contractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer. Notwithstanding anything to the contrary in this **Section 3.04**, Change Orders costing less than Twenty-Five Thousand Dollars (\$25,000.00) each, to an aggregate amount of One Hundred Thousand Dollars (\$100,000.00), do not require DOHDCD's prior written approval as set forth in this **Section 3.04**, but DOHDCD shall be notified in writing of all such Change Orders prior to the implementation thereof and the Developer, in connection with such notice, shall identify to DOHDCD the source of funding therefor.

Notwithstanding the foregoing, all Change Orders must be independently reviewed by HUD. HUD's approval (or disapproval) of a proposed Change Order shall be binding upon the City.

**3.05 DOHDCD Approval.** Any approval granted by DOHDCD of the Scope Drawings, Plans and Specifications and the Change Orders 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 DOHDCD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

**3.06 Other Approvals.** Any DPDDCD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals) hereof. The Developer shall not commence construction of the Project until the Developer has obtained all necessary permits and approvals (including but not limited to DOHDCD's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's bonding as required hereunder.

**3.07 Progress Reports and Survey Updates.** The Developer shall provide DOHDCD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DOHDCD's written approval pursuant to Section 3.04). The Developer shall provide three (3) copies of an updated Survey to DOHDCD upon the request of DOHDCD or any lender providing Lender Financing, reflecting improvements made to the Property.

**3.08 Inspecting Agent or Architect.** An independent agent or architect (other than the Developer's architect) approved by DOHDCD shall be selected to act as the inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DOHDCD, prior to requests for disbursement for costs related to the Project hereunder. The architects/engineers who provided the Scope Drawings will act as the inspectors and shall perform these inspections, all of which will satisfy this requirement.

**3.09 Barricades.** Prior to commencing any construction requiring barricades, the 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. DOHDCD 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.** The Developer 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 the Developer, the Property and the Project in the City's promotional literature and communications.

**3.11 Utility Connections.** The Developer 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 the Developer first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

**3.12 Permit Fees.** In accordance with the ordinance approved by City Council on July 23, 2008[ 2009] and subsequently signed by the Mayor of the City of Chicago, the City has elected to waive certain building, permit, engineering, tap on and inspection fees for the Project as specified in such ordinance.



**3.13 Environmental Features.** The Facility shall be designed to provide the required items listed under DOHDCD's Affordable Housing Green/Energy Efficiency Matrix for Multi-Family New Construction.

**3.14. Conveyance of Property.** The following provisions shall govern the City's conveyance of the Property to the Developer:

(i) Form of Quitclaim Deed. The City shall convey title to the parcels comprising the Property by one or more quitclaim deeds for the sum of One Dollar (\$1.00) (the "Purchase Price"), which shall be paid by the Developer to the City on the Closing Date in cash, wire transfer or other immediately available funds. The Developer acknowledges and agrees that the Property has a fair market value price of approximately \$1,950,000 ~~1,180,000~~ and that the Purchase Price reflects a "Discounted Sale" of the land as defined in 47 Ill. Admin. Code Section 355.306 relating to the Illinois Affordable Housing Tax Credits (the "Donation Credits"). The Discounted Sale has been made in express reliance upon the Developer's undertakings under this Agreement, including, without limitation, the title provisions in this Section 3, the affordability covenants set forth in the Recorded Affordability Document relating to the Project's seventy (70) one-bedroom units, and the environmental provisions in Section 11. The conveyance of and title to such parcels shall, in addition to the provisions of this Agreement, be subject to:

- (a) the Redevelopment Plan;
- (b) the standard exceptions in an ALTA insurance policy;
- (c) all general real estate taxes;
- (d) easements, encroachments, covenants and restrictions of record and not shown of record; and
- (e) such other title defects as may exist.

If necessary to clear title of exceptions for general real estate tax liens attributable to taxes due and payable prior to the Closing Date, the City shall submit to the County a tax abatement letter and/or file a vacation of tax sale proceeding in the Circuit Court of Cook County, seeking the exemption or waiver of such pre-closing tax liabilities, but shall no further duties with respect to any such taxes. The City shall also use good faith, commercially reasonable efforts to clear such other title defects as may exist, but such good faith, commercially reasonable efforts shall in no instance obligate the City to incur any costs for releasing liens, settling disputed tax claims, paying unpaid taxes that cannot be addressed by the submission of a tax abatement letter or a tax sale proceedings, or similar matters. If the Developer finds title to any parcel objectionable, Developer's sole option shall be to decline to accept title to any such parcel, with no adjustment offset or adjustment in the Purchase Price. ~~Notwithstanding the foregoing, the City shall file and cause to be released from the Property as a condition precedent to its conveyance of the Property to Developer those certain Claim for Liens in favor of the City recorded against the Property as documents nos. 89250917 and 95684332.~~

(ii) The Property Closings. The Property closings shall take place on such date and at such place as the parties may mutually agree to in writing, but in no event earlier than the satisfaction of all conditions precedent to closing set forth in Section 5 and the Closing Date.



(iii) Recordation of Quitclaim Deeds. The Developer shall promptly record the quitclaim deed for the Property in the Recorder's Office of Cook County. The Developer shall pay all costs for so recording the quitclaim deed.

(iv) Escrow. In the event that the Developer requires conveyance through an escrow, the Developer shall pay all escrow fees.

#### SECTION 4. FINANCING

**4.01 Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be ~~\$13,805,237~~, 13,826,130, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Estimated City Funds*	\$ 725,000
Lender Financing:	
<del>DOHDCD</del> HOME Loan	\$ <del>1,554,157</del> <u>1,900,000</u>
HUD Section 202 Grant	\$10,164,798
HUD Predevelopment Grant	\$ 304,425
DCEO Grants	\$ 208,607
Donations Tax Credit Equity	\$ <del>848,250</del> <u>523,300</u>
<b>ESTIMATED TOTAL</b>	<b><del>\$13,805,237</del> <u>13,826,130</u></b>

\*City Funds in the amount of \$181,250 shall be bridged by Equity (subject to Sections 4.03(b) and 4.06) until the Certificate of Completion is issued as set forth in the Agreement.

**4.02 Developer Funds.** Equity and/or Lender Financing 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 the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit C 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 therein (subject to Sections 4.03(b) and 4.05(d)), contingent upon receipt by the City of documentation satisfactory in form and substance to ~~DOHDCD~~ evidencing such cost and its eligibility as a Redevelopment Project Cost. At the closing, the City Funds shall be deposited into the Escrow and disbursed through the Escrow, at intervals and in amounts, as approved by ~~DOHDCD~~, pursuant to the Escrow Agreement, provided that (1) \$543,750 of the City Funds shall be disbursed through the Escrow prior to the disbursement of any of the HUD Capital Advance proceeds, and (2) \$181,250 of the City Funds will be bridged by Equity until the Certificate is issued and at such time the City shall reimburse the Developer such amount in accordance with the terms and conditions contained herein.



(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 hereof, the City hereby agrees to provide City funds (the "City Funds") to pay for or reimburse the Developer for the costs of the TIF-Funded Improvements, provided, however, that the amount of the Incremental Taxes deposited into the Bronzeville47th/State TIF Fund shall be sufficient to pay for such costs. The Developer acknowledges and agrees that the City's obligation to pay for TIF-Funded Improvements up to a maximum of \$725,000 is contingent upon the fulfillment of the conditions set forth in this Agreement.

**4.04 Construction Escrow; Requisition Form.** DOHDCD must approve disbursements of the City Funds from the Escrow. The Developer shall submit a Requisition Form along with the other necessary documentation described in the Escrow Agreement prior to each disbursement of City Funds. The Developer shall meet with DPDDCD at the request of DPDDCD to discuss the Requisition Form(s) previously delivered.

Notwithstanding any other provision in this Agreement, in the event of a conflict between the provisions in this Agreement governing the disbursement of the City Funds and the provisions in the Escrow Agreement relating to the disbursement of the City Funds and the order of disbursement and conditions to disbursement of the City Funds and all other Lender Financing sources, the terms of the Escrow Agreement shall control.

**4.05 Treatment of Prior Expenditures and Subsequent Disbursements.**

(a) Prior Expenditures. Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPDDCD and approved by DPDDCD as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the "Prior Expenditures"). Except for any Prior Expenditures approved by HUD and paid with proceeds of the HUD Predevelopment Grant, DPDDCD shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. Exhibit I hereto sets forth the prior expenditures approved by DPDDCD as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to the Developer by the City with City Funds but may be eligible for reimbursement through the Lender Financing identified in Section 4.01 hereof.

(b) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of DOHDCD, being prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$25,000 or \$100,000 in the aggregate, may be made without the prior written consent of DOHDCD.

**4.06 Cost Overruns**. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.03 hereof, or if the cost of completing the Project exceeds the Project Budget, the Developer 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. Notwithstanding the foregoing, Developer may satisfy in whole or part its obligation to pay the Cost Overruns with the proceeds of the Lender Financing identified in Section 4.01 hereof.

**4.07 Preconditions of Disbursement.** Prior to each disbursement of City Funds hereunder, the Developer shall submit documentation regarding the applicable expenditures to DOHDCD, which shall be satisfactory to DOHDCD in its sole discretion. Delivery by the Developer to DOHDCD of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a 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 amount payable to (or paid to) (i) the contractors who have performed work on the Project, and/or their payees, and/or (ii) the architect for the inspections performed in monitoring the construction of the Project;

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

(c) the Developer has 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 Redevelopment Agreement are true and correct and the Developer is in compliance with all covenants contained herein;

(e) the Developer has received no notice and has 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. "Available Project Funds" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the 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 the Developer 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 the Developer. In addition, the 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 Sale or Transfer of the Property or Project by Developer.**

(a) Prior to the Date of Issuance of the Certificate. Developer must obtain the prior approval of the City for any sale or transfer of any part of the Property or the Project prior to the issuance of the Certificate. Such approval by the City will be subject to the reasonable discretion requirement stated in Section 18.14. Notwithstanding the foregoing, the City shall approve a transfer, sale or conveyance of the Property that is requested by HUD to avoid a HUD Mortgage default or that results from a foreclosure or deed in lieu of foreclosure relating to the HUD Mortgage.

(b) After the Date of Issuance of the Certificate. After the date of the Certificate, Developer need not obtain prior approval for any sale or transfer of any part of the Property or the Project. Developer must, however, notify the City not less than 60 days before any closing of sale of Developer's intention to sell any part of the Property or the Project. Developer must provide the City with true and correct copies of any contract for sale and related documents as part of such notice.

**4.09 Conditional Grant.** The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds disbursed are subject to being reimbursed as provided in Section 7.03(c) hereof.

**4.10 Non-Recourse.** Notwithstanding any provision in this Agreement to the contrary, upon the occurrence of an Event of Default that remains in effect after the expiration of all applicable cure periods (including any default under Section 4.09 hereof), the Developer's obligations to repay or reimburse the City for the City Funds is a non-recourse obligation of the Developer and shall be paid exclusively from available insurance proceeds or Residual Receipts (as defined in the HUD Regulatory Agreement). The City shall not have or assert any claim, lien or interest in or against the assets or income of the Project without the prior written approval of HUD, which approval HUD may withhold in its sole discretion.

## **SECTION 5. CONDITIONS PRECEDENT**

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

**5.01 Project Budget.** The Developer has submitted to DPDDCD, and DPDDCD has approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.



**5.02 Scope Drawings and Plans and Specifications.** The Developer has submitted to DOHDCD, and DOHDCD has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of Section 3.02 hereof.

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

**5.04 Financing.** The Developer has furnished proof reasonably acceptable to the City that the Developer has Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with Equity set forth in Section 4.01) to complete the Project. Any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a subordination agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

**5.05 Acquisition and Title.** On the Closing Date, the Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Developer as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on Exhibit G hereto and evidences the recording of this Agreement pursuant to the provisions of Section 8.17 hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including, but not limited to: owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking based on plans and specifications), contiguity, location, access and survey. The Developer has provided to DPDCCD on or prior to the Closing Date certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPDCCD's satisfaction, by the Title Policy and any endorsements thereto.

**5.06 Evidence of Clean Title.** The Developer, at its own expense, has provided the City with searches under the Developer's name as follows:

Secretary of State	UCC search
Secretary of State	Federal tax search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax search
Cook County Recorder	State tax search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

showing no liens against the Developer, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.



**5.07 Surveys.** The Developer has furnished the City with three (3) copies of the Survey.

**5.08 Insurance.** The Developer, at its own expense, has insured the Property in accordance with **Section 12** hereof, and has delivered certificates required pursuant to **Section 12** hereof evidencing the required coverages to DOHDCD.

**5.09 Opinion of the Developer's Counsel.** On the Closing Date, the Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit J, with such changes as required by or acceptable to Corporation Counsel. If the Developer has engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in Exhibit J hereto, such opinions were obtained by the Developer from its general corporate counsel.

**5.10 Evidence of Prior Expenditures.** The Developer has provided evidence satisfactory to DPDDCD in its sole discretion of the Prior Expenditures in accordance with the provisions of **Section 4.05(a)** hereof.

**5.11 Financial Statements.** The Developer shall provide Financial Statements to DPDDCD for its most recent fiscal year, and audited or unaudited interim financial statements.

**5.12 Documentation.** The Developer has provided documentation to DPDDCD, satisfactory in form and substance to DPDDCD, with respect to current employment matters.

**5.13 Environmental.** The Developer has provided DOHDCD with copies of that certain phase I environmental audit completed with respect to the Property and any phase II environmental audit with respect to the Property required by the City. The 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.** The Developer has provided a copy of its Articles of Incorporation, as amended, containing the original certification of the Secretary of State of its state of incorporation; certificates of good standing from the Secretary of State of its state of incorporation and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws of the corporation; and such other corporate documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

**5.15 Litigation.** The Developer has provided to Corporation Counsel and DPDDCD, a description of all pending or threatened litigation or administrative proceedings involving the Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

**6.01 Bid Requirement for Contractors.** Prior to entering into an agreement with any contractor for construction of the Project, the Developer shall solicit bids from qualified contractors eligible to do business with the City of Chicago, and shall submit all bids received to



DOHDCD for its inspection and written approval. For the TIF-Funded Improvements, the Developer shall select the contractor submitting the lowest responsible bid who can complete the Project in a timely manner. If the Developer selects any contractor submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. The Developer shall submit copies of the Construction Contract to DOHDCD in accordance with **Section 6.02** below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DOHDCD within five (5) business days of the execution thereof. The Developer shall ensure that no contractors shall begin work on the Project until the Plans and Specifications have been approved by DOHDCD and all requisite permits have been obtained.

Notwithstanding the foregoing, the City acknowledges that (i) the Developer has previously selected a General Contractor that HUD has approved pursuant to and in accordance with the HUD Section 202 Program requirements and (ii) HUD's approval of the General Contractor shall be binding upon the City for purposes of this section.

**6.02 Construction Contract.** Prior to the execution thereof, the Developer shall deliver to DOHDCD a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with **Section 6.01** above, for DOHDCD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. HUD's approval of the Construction Contract shall be binding upon the City for purposes of this section, except for any modifications to the City Construction Rider. Within ten (10) business days after execution of such contract by the Developer and any other parties thereto, the Developer shall deliver to DOHDCD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

**6.03 Performance and Payment Bonds.** Prior to the commencement of any portion of the Project which includes work on the public way, the Developer shall require that the General Contractor shall cause to be issued a Performance-Payment Bond Dual Obligee Under Section 202 or the Housing Act of 1959 and Section 811 of the National Affordable Housing Act of 1990, HUD form 92452-CA, from a surety acceptable to HUD and in the name of the Developer for the lump sum amount of the Construction Contract and with HUD designated as the only dual obligee.

**6.04 Employment Opportunity.** The Developer shall contractually obligate and cause the General Contractor, and the General Contractor shall cause each of its subcontractors, to agree to the provisions of **Section 10** hereof.

**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 3.04** (Change Orders), **Section 8.08** (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) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPBDCD within five (5) business days of the execution thereof.



## SECTION 7. COMPLETION OF CONSTRUCTION

**7.01 Certificate of Completion of Construction.** Upon completion of the construction of the Project in accordance with the terms of this Agreement, and upon the Developer's written request, DPDDCD shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. DPDDCD shall respond to the Developer's 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 the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures.

Notwithstanding the foregoing, a determination by HUD that construction has been completed as evidenced by its issuance to the Developer of HUD's Permission to Occupy the Project shall be binding on the City as to its determination of completion of construction of the Project, and upon such a determination by HUD, the City shall promptly issue its Certificate of Completion.

**7.02 Effect of Issuance of Certificate; Continuing Obligations.** The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein 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 Sections 8.02, 8.06, 8.18 and 8.19 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 upon the issuance of a Certificate, 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 issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to Section 18.15 of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

**7.03 Failure to Complete.** If the Developer 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 pursuant hereto;



(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. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to **Section 4.01**, the Developer 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 seek reimbursement of the City Funds from the Developer, subject to **Section 4.10** hereof.

**7.04 Notice of Expiration of Term of Agreement.** Upon the expiration of the Term of the Agreement, **DPDDCD** shall provide the Developer, at the Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

## **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER.**

**8.01 General.** The Developer represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

(a) the Developer is an Illinois not-for-profit corporation duly organized, validly existing, qualified to do business 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) the Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its Articles of Incorporation or by-laws 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 the Developer is now a party or by which the Developer is now or may become bound;

(d) in accordance with **Section 3.14** hereof, Developer shall acquire 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 as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to **Section 8.15** hereof);

(e) the Developer is 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, threatened or affecting the Developer which would impair its ability to perform under this Agreement;



(g) the Developer has and shall 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) the Developer is 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 the Developer is a party or by which the Developer 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 the assets, liabilities, results of operations and financial condition of the Developer, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of the Developer since the date of the Developer's most recent Financial Statements;

(j) prior to the issuance of a Certificate, the Developer shall not do any of the following without the prior written consent of DPDDCD: (1) 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 thereto) except in the ordinary course of business or as approved by HUD; (3) enter into any transaction outside the ordinary course of the Developer'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 the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPDDCD, 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 thereto, except Lender Financing disclosed in the Project Budget; and

(l) Developer has not 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 the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City; and

(m) neither the Developer nor any affiliate of the Developer 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.



**8.02 Covenant to Redevelop.** Upon DPDDCD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in **Sections 3.02** and **3.03** hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, the HUD Section 202 Program requirements and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

**8.03 Redevelopment Plan.** The Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan.

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

**8.05 Other Bonds.** The 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 the Developer or the Project and shall not result in any lien, encumbrance upon or claim against the Project. Upon HUD's written direction, the Developer shall 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 thereto. Any expenses incurred by the Developer shall be reimbursed by the City, unless such expenses are approved by HUD for reimbursement through the Project Rental Assistance Contract then in effect between HUD and Developer for the Project.

**8.06 Employment Opportunity; Progress Reports.** The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor (and the General Contractor shall, in turn, use reasonable efforts to cause its subcontractors) to abide by the terms set forth in **Section 10** hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.06, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% 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, the Developer shall also deliver a plan to DQHDCCD which shall outline, to DQHDCCD's satisfaction, the manner in which the Developer shall correct any shortfall.

**8.07 Employment Profile.** The Developer shall submit, and contractually obligate and cause the General Contractor (and the General Contractor shall, in turn, use reasonable efforts to cause its subcontractors to submit, to DQHDCCD, from time to time, statements of its employment profile upon DQHDCCD's request.



**8.08 Prevailing Wage.** On account of the HUD Capital Advance and the Lender Financing in the amount of approximately ~~\$1,554,1571,900,000~~ being provided by the City, acting through its Department of ~~Housing~~Community Development, to the Developer from funds available pursuant to the HOME Investment Partnerships Program authorized by the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701 et seq., the Project is subject to the requirements of the Davis-Bacon Act, 40 U.S.C. Section 276a et seq. Accordingly, pursuant to 820 ILCS 130/11, Section 11 of the Illinois Prevailing Wage Act (820 ILCS 130/0/01 et seq.), the requirements of Illinois Prevailing Wage Act shall not apply to the Project.

**8.09 Arms-Length Transactions.** Unless DPDDCD has given its prior written consent with respect thereto, no Affiliate of the Developer 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. The Developer shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer and reimbursement to the Developer for such costs using City Funds, or otherwise), upon DPDDCD's request, prior to any such disbursement.

**8.10 Conflict of Interest.** Pursuant to Section 5/11-74.4-4(n) of the Act, the 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 the 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 the Developer's business, the Property or any other property in the Redevelopment Area.

**8.11 Disclosure of Interest.** The Developer's counsel has no direct or indirect financial ownership interest in the Developer, the Property or any other aspect of the Project.

**8.12 Financial Statements.** The Developer shall obtain and provide to DPDDCD Financial Statements for the Developer's fiscal year ended December 31, ~~2009~~2010 and each year thereafter for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPDDCD may request.

**8.13 Insurance.** The Developer, at its own expense, shall comply with all provisions of Section 12 hereof.

**8.14 Non-Governmental Charges.** (a) Payment of Non-Governmental Charges. Except for the Permitted Liens, the Developer agrees 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, the Developer 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. The Developer shall furnish to DPDDCD, within thirty (30) days of DPDDCD's request, official receipts from the appropriate entity, or other proof satisfactory to DPDDCD, evidencing payment of the Non-Governmental Charge in question.



(b) Right to Contest. The Developer has 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 the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.14); or

(ii) at DPDDCD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPDDCD in such form and amounts as DPDDCD 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.

**8.15 Developer's Liabilities**. The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer to any other person or entity. The Developer shall immediately notify DPDDCD of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

**8.16 Compliance with Laws**. To the best of the Developer'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, the Developer shall provide evidence satisfactory to the City of such compliance.

**8.17 Recording and Filing**. The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of Cook County, Illinois. This Agreement shall be recorded prior to any mortgage made in connection with Lender Financing. The Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

**8.18 Real Estate Provisions**.

(a) Governmental Charges.

(i) Payment of Governmental Charges. The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project, or become due and payable, and which create, may create a lien upon the Developer or all or any portion of



the Property or the Project. "Governmental Charge" shall mean 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 the Developer, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. The 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. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to DPDDCD of the Developer's intent to contest or object to a Governmental Charge and, unless, at DPDDCD's sole option,

(i) the Developer shall demonstrate to DPDDCD's satisfaction that legal proceedings instituted by the 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 prior to final determination of such proceedings; and/or

(ii) the Developer shall furnish a good and sufficient bond or other security satisfactory to DPDDCD in such form and amounts as DPDDCD 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 the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise DPDDCD thereof in writing, at which time DPDDCD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in DPDDCD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPDDCD deems advisable. All sums so paid by DPDDCD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPDDCD by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

(c) Real Estate Taxes. The City acknowledges that the Developer shall file a property tax exemption application for the Property in accordance with the HUD Section 202 Program requirements; however, the Developer's failure to secure a property tax exemption shall not be a default hereof.



### 8.19 Residential Unit Profile.

(a) Units. The Facility will include a total of 70 rental units of which 100% will be affordable to elderly persons (defined as a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy in accordance with the HUD Section 202 Program) with an annual income of no more than 50 percent of the AMI, as follows:

<u>Group</u>	<u>Type</u>	<u>Number</u>	<u>Monthly Rent</u>	<u>Square Footage</u>	<u>Income</u>
	1 bed/1 bath	70	\$600	540	50% AMI

(b) Rental Covenant. The affordability requirements applicable to the units, as set forth in the Recorded Affordability Document, shall be covenants running with the land and, except upon a foreclosure or deed in lieu of foreclosure of the HUD Mortgage, except as provided for in the Recorded Affordability Document, shall survive any foreclosure of any portion of the Property for the applicable affordability periods set forth in such agreement, ~~except upon a foreclosure or deed in lieu of foreclosure of the HUD Mortgage.~~

(c) Affordable Housing Covenant. The Developer agrees and covenants to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of Recorded Affordability Document shall, concurrently with the HUD Restrictions, govern the terms of the Developer's obligation to provide affordable housing. Following foreclosure or a deed in lieu of foreclosure of the HUD Mortgage, the Project shall be operated as affordable housing in accordance with HUD's determination and direction. The covenants set forth in this Section 8.19 shall run with the land and be binding upon any transferee.

**8.20 Survival of Covenants.** All warranties, representations, covenants and agreements of the Developer contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in Section 7 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

## 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 hereunder.

**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 hereto and be in effect throughout the Term of the Agreement.



**SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS**

**10.01 Employment Opportunity.** The 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 the Developer operating on the Property (collectively, with the 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** hereof.

**10.02 City Resident Construction Worker Employment Requirement.** The Developer agrees for itself and its successors and assigns, and shall contractually obligate its contractors and 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 of Chicago (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, the Developer, its contractors 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.

The 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 of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

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

The Developer, the contractors 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 DOHDCD 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.

The Developer, the contractors and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DOHDCD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The 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 DOHDCD, affidavits and other supporting documentation will be required of the Developer, the contractors 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 the Developer, the contractors 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 the 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 the 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 the Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to the Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the 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.

The 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.** The Developer and its successors and assigns hereby agree, and shall contractually obligate its or their contractors or any Affiliate of the Developer operating on the Property (individually an "Employer" and collectively, "Employers") to agree, that for the Term of the Agreement with respect to the Developer and during the period of any other such party's provision of services hereunder or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment on the basis of race, color, sex, age, religion, mental or physical disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income, as defined in the City of Chicago Human Rights Ordinance adopted December 21, 1988, Municipal Code of Chicago, ch. 2-160, Section 2-160-010 et seq., as amended from time to time (the "Human Rights Ordinance"). Each Employer will take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. 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.



(b) All solicitation or advertisement for employees placed by or on behalf of any Employer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income.

(c) Each Employer shall comply with federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1992), and any subsequent amendments and regulations promulgated pursuant thereto.

(d) Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE Program"), Section 2-92-420 et seq., Municipal Code of Chicago, 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, during the course of construction of the Project, at least the following percentages of hard construction costs as set forth in the Project Budget (as set forth in Exhibit H hereto) shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs") as follows:

- a. at least 24 percent by MBEs;
- b. at least 4 percent by WBEs.

Consistent with Section 2-92-440, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the 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 the Developer utilizing a MBE or a WBE as a contractor (but only to the extent of any actual work performed on the Project by such contractor), by subcontracting a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials 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 the Developer's MBE/WBE commitment as described in this Section 10.

The Developer shall deliver quarterly reports to DOHDCD 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 the Developer or a 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 DOHDCD in determining the Developer's compliance with this MBE/WBE commitment. The 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 DOHDCD shall have access to all such records maintained by the Developer, on five Business Days' notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.



Upon the disqualification of any MBE or WBE contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified 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 Section 2-92-540, Municipal Code of Chicago.

Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 10 shall be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

Prior to the commencement of the Project, the Developer shall be required to meet with the monitoring staff of DOHDCD with regard to the Developer's compliance with its obligations under this Section 10. All contractors and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to DOHDCD its plan to achieve its obligations under this Section 10, the sufficiency of which shall be approved by DOHDCD. During the Project, the Developer shall submit the documentation required by this Section 10 to the monitoring staff of DOHDCD. Failure to submit such documentation on a timely basis, or a determination by DOHDCD, upon analysis of the documentation, that the Developer is not complying with its obligations under this Section 10, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided hereunder, the City may: (1) issue a written demand to the Developer to halt the Project, (2) withhold any further payments to, or on behalf of, the Developer, (3) draw on the Letter of Credit or (4) seek any other remedies against the Developer available at law or in equity.

(e) The Developer will include the foregoing provisions in every contract entered into in connection with the Project and every agreement with any Affiliate operating on the Property so that such provision will be binding upon each contractor or Affiliate, as the case may be.

Notwithstanding the provisions set forth in this section, in the event HUD exercises its rights to undertake completion of the Project as assignee of the Developer, or as attorney-in-fact of the Developer, the requirements as set forth in this section shall not apply to HUD. In all other circumstances, the Developer, its various contractors, subcontractors and any affiliate of the Developer operating on the Property shall be obligated to comply with all of the requirements of this section. In case of a conflict or ambiguity between this Agreement and the HUD Core Construction Contract, as defined below, regarding the applicability of this section, the Core Construction Contract shall control. The term "Core Construction Contract" shall mean (i) the Construction Contract, Lump Sum (HUD 92-442-CA), (ii) Supplementary Conditions of the Contract For Construction (HUD 2554)(2/2002), (iii) Index of Construction Plans and Specifications, (iv) the Davis Bacon Wage Determination; and (v) Amendment to the Construction Contract to Identify Identities of Interest Between Developer/Contractor/Subcontractor/Architect.

## SECTION 11. ENVIRONMENTAL MATTERS

The Developer hereby represents and warrants to the City that the Developer has conducted environmental studies sufficient to conclude that the Project may be constructed,



completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto, and the Redevelopment Plan.

Without limiting any other provisions hereof, the 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 the 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 the Developer, or any person directly or indirectly controlling, controlled by or under common control with the 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 the 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 the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

## SECTION 12. INSURANCE

The Developer must provide and maintain, at Developer's 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) Prior to 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. Prior to 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, the 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, the 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.

) 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:

The Developer must furnish the City of Chicago, Department of ~~Planning Services~~ Community Development, City Hall, Room 1000, 121 North LaSalle Street 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. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to 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 is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages.



The Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer 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 and Contractors.

The Developer hereby waives and agrees 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 in no way limit the Developer's 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 the Developer 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 is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

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

If Developer, 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.

Notwithstanding the foregoing, if the Developer purchases and maintains insurance in accordance with the HUD Section 202 Program requirements, as evidenced by HUD's Property Insurance Requirements Form 90164-CA, the Developer shall be deemed to have complied with the City's insurance requirements set forth in this Section 12; provided, however, that Developer shall cause Accord 25 and Accord 27 Certificates of Insurance to be issued to the City listing the City as an additional insured on the general liability policy and as a junior mortgagee on the property insurance.



### 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 "Indemnitees") 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 Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnities shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner relating or arising out of:

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

(ii) the Developer's or any contractor's failure to pay 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, the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by the Developer or any Affiliate Developer or any agents, employees, contractors or persons acting under the control or at the request of the Developer or any Affiliate of Developer; or

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

provided, however, that Developer shall have no obligation to an Indemnitee arising from the gross negligence, wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it violates 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.

Notwithstanding the foregoing, the only sources of payments made by the Developer upon written approval of HUD under this Section 13.01 shall be from available insurance proceeds or Residual Receipts as defined by HUD in the Regulatory Agreement. No indemnitee shall have or assert any claim, lien or interest in or against the assets or income of the HUD Project No. 071-EE212.

### SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

**14.01 Books and Records.** The Developer 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 the Developer's loan statements, if any, General Contractor and subcontractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense. The Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer with respect to the Project.

**14.02 Inspection Rights.** Upon three (3) business days' notice, any authorized representative of the City has 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 the Developer hereunder:

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

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

(c) the making or furnishing by the Developer to the City of 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 hereunder, 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 the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer'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 the Developer; 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 the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; 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) the entry of any judgment or order against the Developer which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

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

(i) the dissolution of the Developer; or

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor).

Notwithstanding the foregoing, if subsequent to the conveyance of the Property to the Developer, the Developer defaults in any specific manner described in this Section 15.01, the City shall give written notice to the Developer and additionally shall give written notice to HUD within thirty (30) days of the occurrence of such default. The Developer and HUD shall have the right within three (3) months from the receipt of such notice to correct the default. In the event that the Developer fails to correct the default and HUD is unable to or elects not to correct said default, HUD shall suspend and be under no obligation to advance proceeds of its Capital Advance (if the Event of Default occurs during the construction period), and if HUD desires, shall select a qualified and financially responsible party or parties ("Subsequent Developer") which shall be approved by HUD only after consultation with and approval of the City to complete the construction of the Improvements and/or to own and operate the Project. The Subsequent Developer shall enter into an amended and restated redevelopment agreement with the City whereby the Subsequent Developer shall assume the covenants contained in this Agreement, the HUD Mortgage, HUD Restrictions and HUD Capital Advance Agreement with regard to completion, ownership and operation of the Project. The execution of the amended and restated redevelopment agreement between the City and the Subsequent Developer shall occur after the submission to and approval by the City and HUD of proof of financing and economic disclosure statement by the Subsequent Developer, and shall be recorded with the Recorder's Office immediately prior to the recordation of the quitclaim deed from the Developer to the Subsequent Developer, and the assumption of the HUD Mortgage and the HUD Capital Advance Agreement by the Subsequent Developer. Upon conveyance of the Project to the Subsequent Developer, as described herein, and compliance by the Subsequent Developer with all of the requirements of the Capital Advance, HUD will resume funding of its Capital Advance. The conveyance of the Project by the Developer to the Subsequent Developer shall be in accordance with all applicable federal, state, and local laws, ordinances and regulations and



consistent with the objectives of this Agreement, provided, however, that the transfer of the title shall not defeat, render invalid or otherwise limit any lien or mortgage placed upon the Project or the Property, including without limitation, the HUD Mortgage. Subject to Section 4.10, the City shall be entitled to recover from the Developer only, all costs and expenses, including reasonable attorneys' fees, incurred in transferring title to the Subsequent Developer.

For purposes of this Section, the parties agree that HUD shall be deemed a third party beneficiary of this Agreement.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, may suspend disbursement of City Funds. Additionally, upon the occurrence of an Event of Default in relation to **Section 8.19**, the Developer shall reimburse the City all of the City Funds disbursed to the Developer to date, subject to **Section 4.10**. 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 injunctive relief or the specific performance of the agreements contained herein.

**15.03 Curative Period.** In the event the Developer shall fail to perform a monetary covenant which the 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 the Developer has failed to perform such monetary covenant within sixty (60) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the 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 the Developer has failed to cure such default within sixty (60) 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 sixty (60) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such sixty (60) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

## SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on **Exhibit G** hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "Existing Mortgages." Any mortgage or deed of trust that the Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that the 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 herein as a "Permitted Mortgage." It is hereby agreed by and between the City and the Developer as follows:



(a) In the event that a mortgagee or any other party shall succeed to the 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 the Developer's interest hereunder in accordance with Section 18.15 hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the 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) In the event that any mortgagee shall succeed to the 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 the Developer's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "the Developer" hereunder; 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 the Developer's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, in which case the Developer shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Developer's interest hereunder, 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) Prior to the issuance by the City to the Developer of a Certificate pursuant to Section 7 hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPDDCD.

#### SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder 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~~ Community Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

With Copies To:

City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602



If to the Developer: TRC Senior Village I, NFP  
c/o The Renaissance Collaborative  
3757 S. Wabash  
Chicago, IL 60653  
Attn: Patricia Abrams

With Copies To:

Applegate & Thorne-Thomsen, P.C.  
322 South Green Street, Suite 400  
Chicago, Illinois 60607  
Attn: Bill Skalitzky

If to HUD: U.S. Department of Housing and Urban Development  
Legal Department, 26<sup>th</sup> Floor  
Chief Program Attorney  
77 West Jackson Blvd  
Chicago, IL 60604  
HUD Project No. 071-EE212

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 the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto and HUD; provided, however, that the City, in its sole discretion, may amend, modify or supplement **Exhibit D** hereto without the consent of any party hereto. It is agreed that 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** hereof) 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 the Developer by more than [ninety (90)] days.

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



**18.03 Limitation of Liability.** No member, official or employee of the City shall be personally liable to the 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 the Developer from the City or any successor in interest or on any obligation under the terms of this Agreement.

**18.04 Further Assurances.** The 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 the 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 the 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 hereof. 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 hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

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

**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 Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

**18.09 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.

**18.10 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 herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**18.11 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.

**18.12 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.



**18.13 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.

**18.14 Approval.** Wherever this Agreement provides for the approval or consent of the City, DPDDCD or the Commissioner, or any matter is to be to the City's, DPDDCD'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, DPDDCD 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 DPDDCD in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

**18.15 Assignment.** The 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 the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.18, 8.19 and 8.20 hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

**18.16 Binding Effect.** This Agreement shall be binding upon the Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, 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.

**18.17 Force Majeure.** Neither the City nor the 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 hereunder. 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.

**18.18 Exhibits.** All of the exhibits attached hereto are incorporated herein by reference.

**18.19 Business Economic Support Act.** Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act, the 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 the Developer has locations in the State. Failure by the 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 herein.

**18.20 Venue and Consent to Jurisdiction.** If there is a lawsuit under this Agreement, each party may hereto 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.

**18.21 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.

**18.22 Business Relationships.** The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (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**" (as defined in Section 2-156-080 of the Municipal Code of Chicago), 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**" (as defined in Section 2-156-080 of the Municipal Code of Chicago), 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, 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. The 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.

**18.23 Incorporation of HUD Required Provisions Rider.** The document entitled "HUD-Required Provisions Rider" attached hereto as Exhibit L is hereby incorporated into this Agreement as if fully set forth herein and shall remain a part of this Agreement for so long as the Secretary of HUD or his/her successors or assigns are the holders of the HUD Mortgage Note (as defined in the HUD-Required Provisions Rider) that is secured by the HUD Mortgage recorded against the Property. Upon such time as HUD is no longer the holder of the HUD Mortgage Note, or upon repayment in full of the HUD Capital Advance, or upon the expiration of the HUD Restrictions encumbering the Property, the parties hereto agree that the HUD-Required Provisions Rider shall no longer be a part of this Agreement.



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

**TRC SENIOR VILLAGE I, NFP**, an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Patricia Abrams  
Its Executive Director

**CITY OF CHICAGO**

By: \_\_\_\_\_  
~~Arnold L. Randall~~  
Christine Raguso  
Acting Commissioner  
Department of Planning and Community 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 Patricia Abrams, personally known to me to be the Executive Director of TRC Senior Village I, NFP, an Illinois not-for-profit 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 she signed, sealed, and delivered said instrument, pursuant to the authority given to her by the Board of Directors of the Developer, as her free and voluntary act and as the free and voluntary act of the 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 ~~Arnold L. Randall~~ Christine Raguso, personally known to me to be the Acting Commissioner of the Department of ~~Planning and~~ Community 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 ~~heshe~~ she signed, sealed, and delivered said instrument pursuant to the authority given to ~~himher~~ 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 \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

[City of Chicago Insurance Certificate Form and (Sub)Exhibits "A", "D", "E" and "I" referred to in this TRC Senior Village I, NFP Redevelopment Agreement unavailable at time of printing.]

[(Sub)Exhibit "F" not referenced to in this TRC Senior Village I, NFP Redevelopment Agreement unavailable at time printing.]

[(Sub)Exhibit "L" attached to this TRC Senior Village I, NFP Redevelopment Agreement printed on pages 64940 through 64944 of this *Journal*.]

(Sub)Exhibits "B", "C", "G", "H", "J" and "K" referred to in this TRC Senior Village I, NFP Redevelopment Agreement read as follows:



(Sub)Exhibit "B".  
(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

*Property Legal Description.*

~~Lots 1, 2, 3, 4, 5, 6, 7 and 8 together with all of the vacated 16 foot alley lying north of and adjoining the north line of Lot 7 and lying south of and adjoining the south line of Lots 1, 2, 3, 4, 5 and 6, the east line of the vacated alley being a straight line drawn for the southeast corner of Lot 6 to the northeast corner of Lot 7, all in Henry R. Bonds Subdivision of Lots 1 to 6 and 21 to 24, inclusive, in resubdivision of Block 2 in Prior and Hopkins Subdivision of the west half of the northwest quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.~~

~~Commonly Known As:~~

~~43 -- 59 East Pershing Road,  
Chicago, Illinois.~~

~~Permanent Index Number:-~~

~~20-03-101-001, Volume 251.~~

Lots 13, 14, 15 and 16 in Block 1 in Jennings Subdivision of part of Jennings and Moffatt's Subdivision of the south 60 acres of the east half of the southwest quarter of Section 10, Township 38 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Numbers:

20-10-306-030, Volume 253;

20-10-306-031, Volume 253; and

20-10-306-032, Volume 253.

Commonly Known As:

346 East 53<sup>rd</sup> Street and

5243 and 5247 South Calumet Avenue  
Chicago, Illinois 60615.



*(Sub)Exhibit "C".*

(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

*T.I.F.-Funded Improvements.*

Expense	Amount
Fifty percent (50%) of the cost of construction of the new rental housing units to be occupied by low-income households (65 ILCS 5/11-74.4-3(q)(11)(F))	<del>\$6,136,911</del> <u>6,165,210*</u>

*(Sub)Exhibit "G".*

(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

*Permitted Liens.*

## 1. Liens or encumbrances against the Property:

- A. the H.U.D. Mortgage dated and recorded concurrently herewith, and the UCC fixture filing in Cook County, Illinois recorded concurrently herewith;
- B. the H.U.D. Regulatory Agreement dated and recorded concurrently herewith;
- C. the H.U.D. Use Agreement dated and recorded concurrently herewith;
- D. Junior Mortgage, Security Agreement and Assignment of Leases and Rents by Developer in favor of the City dated and recorded concurrently herewith;
- E. the Illinois Affordable Housing Tax Credit Regulatory Agreement between the Developer and Illinois Housing Development Authority dated and recorded concurrently herewith; and
- F. those other matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, 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.

---

\* In no event shall the City reimburse the Developer in excess of Seven Hundred Twenty-five Thousand Dollars (\$725,000).



2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any:

None.

*(Sub)Exhibit "H".*

(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

*Project Budget.*

Sources

City Funds*	\$	725,000
<del>D.O.H.D.C.D.</del> HOME Loan	1,554,157	<u>1,900,000</u>
H.U.D. Section 202 Grant		10,164,798
H.U.D. Predevelopment Grant		304,425
D.C.E.O. Grants		208,607
Donations Tax Credit Equity		<u>848,250</u> <u>523,300</u>
		13,805,237
	\$	<u>13,826,130</u>

Uses

Construction Costs

Construction	\$	42,273,822
		<u>12,253,091</u>
Bond Premium		123,978
		<u>77,330</u>
Subtotal:		42,397,800
	\$	<u>12,330,421</u>

\* City Funds in the amount of One Hundred Eighty-one Thousand Two Hundred Fifty Dollars (\$181,250) shall be bridged by Equity until the Certificate of Completion is issued as set forth in the Agreement.



## Professional Fees

Architect's Fee -- Design	\$	219,375
		<u>234,750</u>
Architect's Fee -- Supervision	\$	68,125
		<u>78,250</u>
Legal/Transactional/Zoning		70,020
		<u>81,312</u>
Title and Recording		19,000
		<u>20,000</u>
Cost Certification		8,500
		<u>9,000</u>
Construction Period Insurance		20,000
		<u>31,453</u>
Subtotal:		405,020
	\$	<u>454,765</u>

## Soft Costs

Phase I Environmental	\$	1,800
		<u>4,571</u>
Consultant		105,000
		<u>112,000</u>
Furniture and Equipment		151,672
		<u>163,457</u>
Appraisals		4,400
		<u>6,400</u>
Real Estate Tax Escrow		50,000
		<u>49,700</u>



Minimum Capital Investment (H.U.D.)	\$	10,000
Cost Analysis		3,200
		<u>3,950</u>
Rent Up		40,000
Organizational Fee		750
Taxes during construction		5,000
City Application Fee		500
Subtotal:		372,322
	\$	<u>581,508</u>
Contingency		
Construction Contingency		490,953
		<u>304,944</u>
Subtotal:		490,953
	\$	<u>304,944</u>
Owner's Other Fees		
Survey	\$	5,800
		<u>13,300</u>
Soil Borings		5,820
		<u>12,870</u>
Water B Box Fee		15,000
Construction Management		50,000
Tax Credit Reservation Fee		29,750
D.C.A.P. Fee		31,172



E.P.A. Permit Fee	\$	1,600 <u>2,400</u>
Subtotal:		139,142
	\$	<u>154,492</u>
TOTAL USES:		13,805,237
	\$	<u>13,826,130</u>

*(Sub)Exhibit "J".*

(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

*Opinion Of Developer's Counsel.*

City of Chicago  
33 North LaSalle Street, 2<sup>nd</sup> Floor  
Chicago, Illinois 60602  
Attention: Corporation Counsel

Re: TRC Senior Village

Ladies and Gentlemen:

We have acted as special counsel to TRC Senior Village I, N.F.P., an Illinois not-for-profit corporation (the "owner") in connection with the development and construction of a seventy-one (71) unit senior rental facility to be located at ~~34 -- 59 East Pershing Road (also known as 3901 South Wabash Avenue)~~ East 53<sup>rd</sup> Street, 5243 and 5247 South Calumet Avenue in Chicago, Illinois (the "Project"). We represent the Owner in connection with that certain TRC Senior Village I, N.F.P. Redevelopment Agreement dated as of July       , ~~2008~~2009 the "Redevelopment Agreement") between the Owner and the City of Chicago (the "City"), and the City's agreement to provide Seven Hundred Twenty-five Thousand Dollars (\$725,000) of tax increment financing assistance to the Owner to pay certain T.I.F. eligible expenses as set forth in the Redevelopment Agreement. The Project is located in the ~~Bronzeville~~ 47<sup>th</sup>/State Tax Increment Financing Redevelopment Project Area.

In our capacity as special counsel, we have examined, among other things, (i) the Redevelopment Agreement; (ii) Articles of Incorporation, as amended, of the Owner certified



by the Secretary of State of Illinois on July \_\_\_\_\_, ~~2008~~2009; and (iii) the Owner's Bylaws, Resolutions dated as of July \_\_\_\_\_, ~~2008~~2009, and a Certificate of Good Standing issued by the Secretary of State of Illinois dated as of July \_\_\_\_\_, ~~2008~~2009 (the documents set forth above in (i) through (iii) are collectively referred to herein as the "Documents").

In rendering this opinion we have also examined the original or certified, conformed or photostatic copies of the Judgment Searches of the Owner performed by CT Corporation System, dated \_\_\_\_\_, ~~2008~~2009 (the "Searches"), copies of which have been delivered to the City; the Certificate as defined in paragraph 3 below and referred to in qualification (i) below; and such other documents and legal matters as we have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

For the purposes of this opinion, we have assumed that:

The execution and delivery of the Redevelopment Agreement and other documents reviewed by us, and the entry into and performance of the transactions contemplated by the Redevelopment Agreement, by all parties other than the Owner have been duly authorized by all necessary actions. Further, the Redevelopment Agreement and other documents reviewed constitute the valid and binding obligations of all parties other than the Owner.

All natural persons who are signatories to the Redevelopment Agreement were legally competent at the time of execution; all signatures (other than those on behalf of the Owner) on the Redevelopment Agreement and other documents reviewed by us are genuine; the copies of all documents submitted to us are accurate and complete and conform to the originals; all material terms and conditions of the relationship between the Owner and the other parties are correctly and completely reflected in the Redevelopment Agreement.

Based upon the foregoing, but subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that:

Owner is an Illinois not-for-profit corporation duly created, validly existing and in good standing under the laws of Illinois and has full corporate power and authority to own and lease its properties and to carry on its business as presently conducted.

The Redevelopment Agreement (a) has been properly authorized, executed and delivered by or on behalf of Owner, (b) constitutes the legal, valid and binding obligation of Owner, and (c) is enforceable against the Owner in accordance with its terms.

Owner have all requisite right, power and authority to execute and deliver the Redevelopment Agreement and to perform its obligations thereunder. The execution, delivery and undertaking of performance under the Redevelopment Agreement by Owner will not conflict with, or result in a violation of the Owner's Articles of Incorporation or Bylaws. Such execution, delivery and undertaking of performance (provided each of the Owner performs in accordance with the terms and conditions of the Redevelopment Agreement to which it is a party) will not result in a breach or other violation of any of the



terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental or regulatory authority applicable to the Owner. Such execution and delivery, to our knowledge (based on the Certificate of Owner attached hereto and made a part hereof (the "Certificate")) and without further investigation, will not: (a) result in the creation of any lien, charge or encumbrance on any property or assets of the Owner, except as described in the Redevelopment Agreement and certain financing documents in connection with the Section 202 Supportive Housing for the Elderly program capital advance concurrently herewith made by the United States Department of Housing and Urban Development ("H.U.D.") to the Owner ("Section 202 Capital Advance"), (b) result in a violation of any of the terms, conditions or provisions of any order, writ, injunction or decree of any court, governmental or regulatory authority applicable to the Owner, (c) constitute grounds for the acceleration of the maturity of any agreement or other instrument to which the Owner are a party or by which any of the property of the Owner may be bound, or (d) conflict with, constitute an event of default under, or result in a violation of the provisions of any agreement or other instrument of which we have knowledge to which the Owner are a party, or by which the properties or assets of the Owner are bound.

To our knowledge relying solely on the Certificate, no authorizations, approvals or consents of, or filings or registrations with, or the giving of notice to, any person or any governmental or regulatory authority or agency of the State of Illinois or any political subdivision thereof, other than those that have already been obtained or will be obtained during the course of construction of the Project, are necessary for the execution, delivery and performance (as of the date hereof) by the Owner of the Redevelopment Agreement or for the validity or enforceability thereof, except for recording or filing of the Redevelopment Agreement.

A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law provisions contained in the Redevelopment Agreement and apply the law of the State of Illinois to the transactions evidenced thereby.

To our knowledge, relying solely on the Searches and the Certificate, there are no judgments outstanding against the Owner, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Owner or affecting the Owner or any of its property, or seeking to restrain or enjoin the performance by the Owner of the Redevelopment Agreement or the transactions contemplated in the Redevelopment Agreement, or contesting the validity thereof.

To our knowledge relying solely on the Certificate, without further investigation, there is no default by the Owner with respect to any indenture, loan agreement, mortgage, note, Section 202 Capital Advance document, material contract, lease or any other agreement or instrument to which the Owner is a party or by which the Owner is bound, a default under which would have a material adverse effect on the Owner or its business.



To our knowledge relying solely on the Searches and the Certificate, without further investigation, there is no default by the Owner with respect to any order, writ, injunction, or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Owner or their respective businesses.

To our knowledge, relying solely on the Certificate and the Searches, all of the assets of the Owner are free and clear of mortgages, liens pledges, security interests and encumbrances except for those specifically set forth in the Documents and the Title Policy Number \_\_\_\_\_ issued by Title Services, Inc. as agent for Stewart Title Guaranty Company and dated as of \_\_\_\_\_, ~~2008~~2009 (the "Title Policy") with respect to the Property (as defined in the Redevelopment Agreement).

To our knowledge, relying solely on the Certificate, without further investigation, Owner owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience or other rights that are necessary for the operation of the Project and its business (other than a certificate of occupancy which will be issued by the City and H.U.D.'s Permission to Occupy the building, both of which should be issued following construction completion in accordance with all City and H.U.D. approved plans and specifications).

The opinions set forth above are subject to the following qualifications:

Wherever we indicate that our opinion with respect to the existence or absence of facts is based on our knowledge, our opinion is based solely on (1) the actual knowledge of the attorneys currently with the firm who have represented the Owner in connection with the transactions contemplated by the Agreement and of any other attorneys presently in our firm whom we have determined are likely, in the course of representing any of said parties, to have knowledge of the matters covered by this opinion, (2) the representations and warranties of the Owner contained in the Redevelopment Agreement, and (3) the Certificate, and we have not undertaken any independent investigation (and we have not made or caused to be made any review of any court file or indices except as described above with respect to the Searches) and no inference as to our knowledge should be drawn from our representation of the Owner or otherwise. However, we know of no facts which lead us to believe such factual matters are untrue or inaccurate;

Your ability to enforce the Redevelopment Agreement may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws now or hereafter in effect relating to or affecting creditors' rights generally, and their interpretation by courts of appropriate jurisdiction;

Enforcement of your rights and remedies may be limited by general principles of equity, regardless of whether such enforcement is considered in a proceeding in equity or at law, and the availability of equitable remedies or equitable defenses would be subject to the discretion of the court requested to grant such remedies or allow such defenses; and further, in this regard, we have assumed that you will exercise your rights and remedies



under the Redevelopment Agreement in good faith and in circumstances and a manner which are commercially reasonable;

Certain provisions of the Redevelopment Agreement may be rendered unenforceable or limited by applicable laws and judicial decisions but such laws and judicial decisions do not render the Redevelopment Agreement invalid as a whole, and there exist in the Redevelopment Agreement or pursuant to applicable law legally adequate remedies for the realization of the principal benefits intended to be provided by the Redevelopment Agreement;

We express no opinion with respect to provisions in any of the Redevelopment Agreement which purport to (i) confer, waive or consent to the jurisdiction of any court, (ii) provide for service of process except in accordance with applicable law, (iii) waive any right granted by statutory or common law, or (iv) require indemnification or contribution for liabilities under the provisions of any Federal or state securities law or in respect to the negligent or wrongful conduct of the indemnified party or its representatives or agents; and

We call your attention to the fact that although we represent the Owner as special counsel in connection with the subject transaction, we do not represent each generally, and our engagement has been limited to the specific matters as to which we have been consulted. Our opinion is limited to the laws of the United States (except as set forth below) and the laws of the State of Illinois and (as to matters set forth in Paragraph 4 only) political subdivisions thereof in effect on the date hereof as they presently apply. We shall have no continuing obligations to inform you of changes in law or fact subsequent to the date hereof or of facts of which we become aware after the date hereof.

We express no opinion as to matters of title or priority or perfection of liens or security interests with regard to real and personal property. We have not reviewed and do not opine as to: (i) compliance by the Project with applicable health, fire, safety, building, zoning, environmental, subdivision laws, ordinances, codes, rules or regulations, (ii) ERISA laws, rules and regulations, or (iii) Federal or state taxation, banking, securities or "blue sky" laws, rules or regulations.

This opinion is limited to the matters set forth herein. This opinion is provided to you as a legal opinion only and not as a guaranty or warranty of the matter discussed herein or the documents referred to herein. No opinion may be inferred or implied beyond the matters expressly contained herein, and no portion of this opinion may be quoted or in any other way published without the express written consent of the undersigned. This opinion is rendered solely for your benefit and no other person or entity shall be entitled to rely on any matter set forth herein without the express written consent of the undersigned.

Very truly yours,

Applegate & Thorne-Thomsen, P.C.



## Certificate Of Owner.

\_\_\_\_\_, 2008

\_\_\_\_\_, 2009

The undersigned, the Executive Director of TRC Senior Village I, N.F.P., an Illinois not-for-profit corporation, hereby certifies to Applegate & Thorne-Thomsen, P.C. as follows:

This certificate (the "Certificate") is made in reference to the TRC Senior Village I, N.F.P. Redevelopment Agreement between the City of Chicago (the "City") and Owner dated as of July \_\_\_\_, ~~2008~~2009 (the "Redevelopment Agreement") and all documents referenced in the legal opinion to which this certificate is attached (the Redevelopment Agreement and all such documents referred to collectively as the "Agreements"), relating to a redevelopment project in the City concerning the TRC Senior Village in Chicago, Illinois (the "Project").

The undersigned is familiar with the Agreements and has made inquiry of those personnel of Owner who are familiar with matters relating to the Agreements and this Certificate. As Executive Director of the Owner, I am familiar with, or have made inquiry of those individuals who are in a position to be familiar with, the following: (a) any judgments, orders, writs, injunctions, or decrees, of any court, governmental or regulatory authority, affecting Owner, the Project or Owner's execution and delivery of the Agreements ("Court Orders"), (b) any agreements or other instrument to which Owner is a party, or by which the properties or assets of the Owner are bound, and affecting the execution and delivery of the Agreements by Owner ("Instruments"), (c) any agreements or other instrument which could cause the creation of any lien, charge or encumbrance on any property or assets of Owner ("Encumbrance Agreements"), (d) any judgments, legal or administrative proceedings pending or to my knowledge threatened before any court or governmental agency against Owner or affecting the Project ("Litigation"), and (e) any options, rights or commitments to transfer or acquire any ownership interests in Owner ("Options").

The signatures on the Agreements executed on behalf of the Owner are genuine.

Except for the following, to my knowledge there are no Court Orders or Options (if none, so state):

\_\_\_\_\_ None \_\_\_\_\_

Except for the following, to my knowledge there are no Instruments, under which the Owner's execution, delivery and performance of the Agreements would cause a violation of, conflict with, default under, or cause the maturity or acceleration of, such Instrument (if none, so state):

\_\_\_\_\_ None \_\_\_\_\_



Except for the following, to my knowledge there are no Encumbrance Agreements other than the Agreements, certain encumbrances set forth in the Title Policy (as defined in the Opinion), and certain liens and encumbrances in accordance with the Section 202 Capital Advance documents (if none, so state):

\_\_\_\_\_  
None

Except for the following, to my knowledge there is no Litigation (if none, so state):

\_\_\_\_\_  
None

I have previously delivered to you an accurate and complete copy of Owner's Articles of Incorporation, as amended, Bylaws and resolutions dated July ~~\_\_\_, 2008~~, \_\_\_\_\_, 2009, all of which are in full force and effect. There are no other filings, agreements or actions governing the existence, organization or operation of Owner. All annual reports required to be filed with the Illinois Secretary of State have been filed and all required fees have been paid in connection therewith with respect to the Owner.

No circumstances have occurred or exist which have triggered or will trigger a dissolution of Owner under, as applicable, its Articles of Incorporation or Bylaws and the Owner continues to exist as an Illinois not-for-profit corporation as of the date hereof.

There exists no default by Owner with respect to any indenture, loan agreement, mortgage, H.U.D. Section 202 Capital Advance document, note or other agreements or instrument to which Owner is a party or by which Owner is bound, a default under which would have a material adverse effect on Owner, the Project or its business or its ability to perform under the Agreements.

Owner is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in or under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on Owner, the Project or its business or its ability to perform under the Agreement.

The Articles of Incorporation and Bylaws evidence that the Owner does not have any members.

The assets of the Owner are free and clear of all mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in or contemplated by the Agreements or set forth in the Title Policy (as defined in the Opinion).

The Owner owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, authorizations and other rights that are necessary for the



operation of its business (other than a certificate of occupancy which will be issued by the City and H.U.D.'s permission to occupy the building, both of which should be issued following construction completion in accordance with all City and H.U.D. approved plans and specifications).

This Certificate may be relied upon by Applegate & Thorne-Thomsen, P.C. in its opinion (the "Opinion") addressed to the City of Chicago in connection with the Agreements. The undersigned consents to the issuance of the Opinion and acknowledges that it has reviewed the form thereof.

In Witness Whereof, The undersigned has executed this Certificate as of the date set forth above.

TRC Senior Village I, N.F.P.,  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Patricia Abrams,  
Executive Director

(Sub)Exhibit "K".  
(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

Requisition Form.

State of Illinois )  
                          ) SS.  
County of Cook )

The affiant, \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ (the "Developer"), hereby certifies that with respect to that certain  
\_\_\_\_\_ Redevelopment Agreement between the 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 T.I.F.-Funded Improvements for the Project reimbursed by the City to date:

\$ \_\_\_\_\_

C. The Developer requests reimbursement for the following cost of T.I.F.-Funded Improvements:

\$ \_\_\_\_\_

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

E. The 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 Redevelopment Agreement are true and correct and the Developer is in compliance with all applicable covenants contained herein.
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 herein have the meanings given such terms in the Agreement.

TRC Senior Village I, N.F.P.

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~~ Community Development

[Certificate referred to in this Requisition Form  
unavailable at time of printing.]

*(Sub)Exhibit "L".*

(To TRC Senior Village I, N.F.P. Redevelopment Agreement)

*H.U.D.-Required Provisions Rider.*

This Rider is attached to and made a part of that certain TRC Senior Village I, N.F.P. Redevelopment Agreement, dated as of [\_\_\_\_\_, ~~2008, 2009~~], by and between TRC Senior Village I, N.F.P., an Illinois not-for-profit corporation ("Developer"), and the City of Chicago, Illinois, an Illinois municipal corporation (the "City"), through its Department of ~~Planning and~~ Community Development ("~~D.P.D.~~D.C.D."), having its offices at 121 North LaSalle Street, Chicago, Illinois 60602, relating to the property ~~located at 34 -- 59 East Pershing Road (also known as 3901 South Wabash Avenue)~~ 346 East 53<sup>rd</sup> Street, 5243 and 5247 South Calumet Avenue, in Chicago, Illinois. In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Document, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Document. As used herein, the term "H.U.D." shall mean the United States Department of Housing and Urban Development; the term "Project" shall have the same meaning as in the Capital Advance Program Regulatory Agreement (H.U.D. Form 92466-CA) between TRC Senior Village I, N.F.P., an Illinois not-for-profit corporation and H.U.D. as described below; the terms "residual receipts" and "distributable residual receipts" shall mean residual receipts as defined in and that may be disbursed as permitted by the Capital Advance Program Regulatory Agreement; and the term "H.U.D. Loan Documents" shall mean, without limitation, the following documents relating to the H.U.D. capital advance for the Project (Project Number 071 EE212):

- A. a Firm Commitment for Capital Advance Financing, dated [\_\_\_\_\_, ~~2008, 2009~~], as amended, issued by the H.U.D.;
- B. Capital Advance Agreement dated as of the date hereof between the Developer and H.U.D.;
- C. date hereof made by the Capital Advance Program Mortgage Note dated as of the

Developer payable to the order of H.U.D. in the principal amount of Ten Million One Hundred Sixty-four Thousand Seven Hundred Ninety-eight Dollars (\$10,164,798) (the "Mortgage Note");

- D. Capital Mortgage (H.U.D. Form 90165-CA) dated as of the date hereof made by Developer in favor of the United States of America, acting by and through the Secretary of H.U.D. and encumbering the Project as security for the said capital advance (the "Mortgage");
  - E. Security Agreement (Chattel Mortgage) dated as of the date hereof between the Developer, as debtor, and H.U.D. as secured party;
  - F. UCC-1 Financing Statement made by the Developer, as debtor, in favor of H.U.D. as secured party recorded with the Cook County Recorder's Office and to be filed with the Illinois Secretary of State;
  - G. Regulatory Agreement for Multi-Family Housing Projects, dated as of the date hereof between the Developer and H.U.D. (the "H.U.D. Regulatory Agreement");
  - H. Capital Advance Use Agreement, dated as of the date hereof, between Developer and H.U.D. (the "H.U.D. Use Agreement"); and
  - I. Project Rental Assistance Contract, to be executed by Developer and H.U.D. upon completion of the Project.
- R-1 Notwithstanding anything in the Document to the contrary, the provisions of the Document are subordinate to all applicable Federal Statutes, H.U.D. regulations and related H.U.D. directives and administrative requirements other than those regulations, related directives or administrative requirements which have been waived in writing by H.U.D. with respect to the Project. The provisions of the Document are also expressly subordinate to the H.U.D. Loan Documents. In the event of any conflict between the Document and the provisions of applicable federal statutes, H.U.D. regulations, related directives and administrative requirements, or H.U.D. Loan Documents, the federal statutes, H.U.D. regulations, related H.U.D. directives and administrative requirements and H.U.D. Loan Documents shall control, except for those H.U.D. regulations, related H.U.D. directives or administrative requirements which have been waived in writing by H.U.D. with respect to the Project.
- R-2 Failure on the part of the Developer to comply with the covenants contained in the Document shall not serve as a basis for default on any H.U.D.-insured or H.U.D.-held mortgage on the Project.
- R-3 Compliance by the Developer with the provisions and covenants of the Document and enforcement of the provisions and covenants contained in the Document,



- including, but not limited to, any indemnification provisions or covenants, will not and shall not result in any claim or lien against the Project, any asset of the Project, the proceeds of the Mortgage, any reserve, or deposit required by H.U.D. in connection with the Mortgage transaction or the rents or other income from the Project, other than distributable residual receipts (as that term is defined in the H.U.D. Regulatory Agreement).
- R-4 No amendment to the Document made after the date of the Mortgage Note shall have any force or effect until and unless such amendment is approved in writing by H.U.D.. No amendment made after the aforesaid date to any H.U.D. Loan Document shall be binding upon the City unless the City has consented thereto in writing.
- R-5 Unless waived in writing by H.U.D. with respect to the Project, any action of the Developer which is prohibited or required by H.U.D. pursuant to applicable Federal law, H.U.D. regulations, H.U.D. directives and administrative requirements or the H.U.D. Loan Documents shall supersede any conflicting provision of the Document, and the performance or failure to perform of the Developer in accordance with such laws, regulations, directives, administrative requirements or H.U.D. Loan Documents shall not constitute an event of default under the Document; and payment shall be permitted in the event of an Event of Default under the Document only if the City demonstrates, by clear and convincing evidence, that the payment will not impair the ability of the Developer to operate the Project for not less than forty (40) years (from the date of final closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance, as required by H.U.D. regulations; and the Secretary of H.U.D., or his successor then acting, or the equivalent officer of any successor Department or Agency, in his sole discretion, consents. By its consent to the use of any indemnity agreement or provision in the Document in connection with the H.U.D. capital advance, there is no promise, express or implied, neither H.U.D. nor any officer or employee of the United States to provide additional funds for the Project in excess of the amount obligated for the capital advance and neither the Developer, sponsor nor the City will assert such a claim in the event the Developer or sponsor makes any payment to the City pursuant to the indemnification agreement.
- R-6 So long as H.U.D. is the holder of any mortgage on the Project or any indebtedness secured by a mortgage on the Project, the City will make no claim on the rents, profits or avails of the land and buildings that make up the Project. So long as H.U.D. is the holder of any mortgage on the Project or any indebtedness secured by a mortgage on the Project, the Developer shall not and are not permitted to pay any amount required to be paid under the provisions of the Document except from



distributable Residual Receipts, as such term is defined in, and in accordance with the conditions prescribed in the H.U.D. Regulatory Agreement, unless otherwise specifically permitted in writing by H.U.D.. Failure to pay, when due, any such required amount due to lack of distributable residual receipts in accordance with the conditions prescribed in the H.U.D. Regulatory Agreement as specifically permitted in writing by H.U.D.

- R-7 In the event of the appointment by any court of any person, other than H.U.D., as a receiver, as a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Document, with or without court action, no rents, revenue or other income of the Project collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Document except from distributable residual receipts as such term is defined in, and in accordance with the H.U.D. Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Project in accordance with all provisions of the H.U.D. Loan Documents. Failure to pay, when due, any such required amount due to lack of distributable residual receipts shall not be an event of default under the Document, but such amount shall accrue and be payable when there is sufficient available residual receipts or at the unaccelerated maturity date of the H.U.D. Mortgage Note, whichever shall first occur.
- R-8 A duplicate of each notice given, whether required or permitted to be given, under the provisions of the Document shall also be given to:

Department of Housing and Urban Development  
77 West Jackson Boulevard.  
Chicago, Illinois 60604  
Attention: Director of Multi-Family Housing  
Project Number 071-EE212

H.U.D. may designate any further or different addresses for such duplicate notices.

- R-9 Notwithstanding anything in the Document to the contrary, the Developer and its successors and assigns may sell, convey, transfer, lease, sublease or encumber the Project or any part thereof provided it obtains the prior written consent of H.U.D. to any such sale, conveyance, transfer, lease, sublease or encumbrance. Notwithstanding anything in the Document to the contrary, the Developer may make application to H.U.D. for approval of a Transfer of Physical Assets in accordance with H.U.D. regulations, directives and policies. A duplicate copy of such application shall be served on the City. Any consent by H.U.D. to such transfer shall be



conclusively deemed to be the City's prior written consent to such transfer and consummation of such transfer shall not be a default under the Document.

- R-10 Notwithstanding anything in the Document to the contrary, the provisions of this H.U.D. Required Provisions Rider are for the benefit of and are enforceable by H.U.D.

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CREATION OF 47<sup>TH</sup>/HALSTED SINGLE-FAMILY PROGRAM, APPROPRIATION OF FUNDS AND EXECUTION OF TAX INCREMENT FINANCING NEIGHBORHOOD IMPROVEMENT PROGRAM AGREEMENT WITH NEIGHBORHOOD HOUSING SERVICES OF CHICAGO, INC.

[O2009-3845]

The Committee on Finance submitted the following report:

CHICAGO, June 30, 2009.

*To the President and Members of the City Council:*

Your Committee on Finance, having had under consideration an ordinance authorizing the entering into and executing of an agreement with Neighborhood Housing Services of Chicago, Inc. regarding the 47<sup>th</sup>/Halsted T.I.F. Neighborhood Improvement Program, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*

On motion of Alderman Burke, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows: