

EXECUTION OF REDEVELOPMENT AGREEMENT WITH AND ISSUANCE OF CITY  
NOTE FOR CHICAGO LAKESIDE DEVELOPMENT, L.L.C.

[O2010-3904]

The Committee on Finance submitted the following report:

CHICAGO, September 8, 2010.

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

Your Committee on Finance, having had under consideration an ordinance concerning the authority to enter into and execute a redevelopment agreement with Chicago Lakeside Development, L.L.C., amount of note not to exceed: \$98,128,919, 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.

Alderman Burke abstains from voting pursuant to Rule 14.

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 Moreno, Fioretti, Dowell, Preckwinkle, Hairston, Lyle, Jackson, Harris, Beale, Pope, Balcer, Cárdenas, Olivo, Foulkes, Thomas, Lane, Rugai, Cochran, Brookins, Muñoz, Zalewski, Dixon, Solis, Maldonado, Burnett, E. Smith, Graham, Reboyras, Suarez, Waguespack, Mell, Austin, Colón, Rice, Mitts, Allen, Laurino, O'Connor, Doherty, Reilly, Daley, Tunney, Levar, Shiller, Schulter, M. Smith, Moore, Stone -- 48.

*Nays* -- None.

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

Alderman Burke invoked Rule 14 of the City Council's Rules of Order and procedure, disclosing that he had represented parties to this ordinance in previous and unrelated matters.

The following is said ordinance as passed:

WHEREAS, Under an ordinance adopted by the City Council ("City Council") of the City of Chicago (the "City") on May 12, 2010 and published at pages 90,395 through 90,446 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 "Redevelopment Plan") for the Chicago Lakeside Phase 1 T.I.F. Redevelopment Project Area (the "Redevelopment Area") was approved under the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (2008 State Bar Edition), as amended (the "Act"); and

WHEREAS, Under an ordinance adopted by the City Council on May 12, 2010 and published at pages 90,447 through 90,451 of the *Journal* of such date, the Redevelopment Area was designated as a redevelopment project area under the Act; and

WHEREAS, Under an ordinance (the "T.I.F. Ordinance") adopted by the City Council on May 12, 2010 and published at pages 90,452 through 90,456 of the *Journal* of such date, tax increment allocation financing was adopted under the Act as a means of financing certain Redevelopment Area redevelopment project costs (as defined in the Act) incurred under the Redevelopment Plan; and

WHEREAS, Chicago Lakeside Development, L.L.C., a Delaware limited liability company ("Developer"), proposes to redevelop the approximately 369 acre tract (net of more than 106 acres of surrounding public park areas) of land that is a portion of the former site of U.S. Steel's South Works plant (the "Site"). All work proposed for the Site is defined collectively as the "Overall Project"; and

WHEREAS, The master plan for the Overall Project created by Developer and its design team with input from City departments and staff (the "Master Plan") contemplates developing the Site in 5 areas and multiple phases. The Chicago Plan Commission adopted the Master Plan as the policy of the City on April 15, 2010; and

WHEREAS, Developer's application for zoning of Area 1 of the Master Plan as a Residential Business Planned Development District was recommended for approval by the Chicago Plan Commission on April 15, 2010, and approved by the City Council on June 9, 2010 and is defined in this ordinance as the "PD"; and

WHEREAS, The private portion of Area 1, is defined in this ordinance as the "Phase 1 Project Property". The Phase 1 Project Property is located in the northwest area of the Site and is generally bounded by relocated U.S. Route 41 to the north and East 83<sup>rd</sup> Street to the south and South Brandon Avenue to the west; and

WHEREAS, Developer plans to redevelop the Phase 1 Project Property by constructing a high-quality, mixed-use retail/residential development that will create a new neighborhood town center in the City and such redevelopment work is defined in this ordinance as the "Phase 1 Project"; and

WHEREAS, Developer has proposed to undertake the Phase 1 Project in accordance with the Redevelopment Plan, the PD and under the terms and conditions of a proposed redevelopment agreement to be executed by Developer and the City, to be financed in part by the issuance of a Note (as defined below); and

WHEREAS, Under Resolution 10-CDC-1 adopted by the Community Development Commission of the City of Chicago (the "Commission") on January 12, 2010, the Commission recommended that Developer be designated as the developer for the Phase 1 Project, and authorized the City's Department of Community Development ("D.C.D.") to negotiate, execute and deliver a redevelopment agreement with Developer for the Phase 1 Project; and

WHEREAS, In consideration of redevelopment project costs for the Phase 1 Project incurred or to be incurred by or on behalf of Developer, the City agrees to issue, and Developer agrees to acquire, according to certain terms and conditions, the Note (as defined below) as a tax increment revenue obligation; and

WHEREAS, The City will receive no cash proceeds in exchange for the Note (as defined below) to be issued under this ordinance; and

WHEREAS, As described in the form of Chicago Lakeside Development Phase 1 Redevelopment Agreement (as defined below) and attached hereto as Exhibit A, including but not limited to Recital H and Section 4.10 thereof, the City anticipates issuing its general obligation bonds and its special assessment bonds (collectively, the "Bonds") as defined and detailed in the Chicago Lakeside Development Phase 1 Redevelopment Agreement), in one or more series, for the purpose of financing capital costs with respect to the Phase 1 Project; and

WHEREAS, Any such Bonds will be issued pursuant to one or more ordinances adopted by the City Council on one or more future dates; and

WHEREAS, The United States Department of Treasury has promulgated final regulations that, among other things, impose certain requirements on the City in connection with the reimbursement of the City from the proceeds of tax-exempt debt for expenditures made for capital improvements, such as the Phase 1 Project; now, therefore,

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

SECTION 1. The above recitals are incorporated herein and made a part hereof.

SECTION 2. Developer is hereby designated as the developer for the Phase 1 Project under Section 5/11-74.4-4 of the Act.

SECTION 3. The Commissioner or Acting Commissioner of D.C.D. (the "Commissioner") or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement between Developer and the City in substantially the form attached hereto as Exhibit A and made a part hereof (the "Chicago Lakeside Development Phase 1 Redevelopment Agreement"), and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Chicago Lakeside Development Phase 1 Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Chicago Lakeside Development Phase 1 Redevelopment Agreement and supporting documents.

SECTION 4. The City Council hereby finds that the City is authorized to issue its tax increment allocation revenue obligation, the Note (as defined below), in an aggregate amount not to exceed \$98,128,919 for the purpose of paying a portion of the eligible costs included within the Phase 1 Project.

SECTION 5. There shall be borrowed for and on behalf of the City an aggregate amount not to exceed \$98,128,919 for the payment of a portion of the eligible costs included within the Phase 1 Project and the note of the City shall be issued up to said amount and shall be designated: "Tax Increment Allocation Revenue Note (Chicago Lakeside Development Phase 1 Redevelopment Project), Taxable Series A". Registered Note Number R-1 (the "Note") shall be for a principal amount not to exceed \$98,128,919. The Note shall be dated the date of delivery thereof, and shall also bear the date of authentication, shall be in fully registered form, shall be in the denomination of the outstanding principal amount thereof and shall become due and payable as provided therein.

The Note shall bear interest at the rate of not to exceed 8.50% per annum computed on the basis of a 360 day year of twelve 30 day months.

The principal of and interest on the Note shall be paid by check or draft of the Comptroller of the City, as registrar and paying agent (the "Registrar"), payable in lawful money of the United States of America to the person in whose name the Note is registered at the close of business on the 15<sup>th</sup> day of the month immediately prior to the applicable payment date; provided, that the final installment of the principal and accrued but unpaid interest of the Note shall be payable in lawful money of the United States of America at the principal office of the Registrar or as otherwise directed by the City.

The seal of the City shall be affixed to or a facsimile thereof printed on the Note, and the Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any

officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the City for the Note, and showing the date of authentication. The Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this ordinance unless and until such certificate of authentication shall have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the Note shall be conclusive evidence that the Note has been authenticated and delivered under this ordinance.

SECTION 6. The City shall cause books (the "Register") for the registration of the Note as provided in this ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the Note. The Registrar shall maintain a list of the names and addresses of the registered owner of the Note. The City is authorized to prepare, and the Registrar shall keep custody of, multiple Note blanks executed by the City for use in the transfer of the Note.

Upon surrender for transfer of the Note at the principal office of the Registrar, duly endorsed by, or accompanied by: (i) a written instrument or instruments of transfer in form satisfactory to the Registrar; (ii) an investment representation in form satisfactory to the City and duly executed by, the registered owner or his attorney duly authorized in writing; and (iii) the written consent of the City evidenced by the signature of the Commissioner (or his or her designee) on the instrument of transfer, the City shall execute and the Registrar shall authenticate, date and deliver in the name of the transferee or transferees, a new, fully registered Note of the same maturity, of authorized denomination, and for a like aggregate principal amount. The execution by the City of the fully registered Note shall constitute full and due authorization of the Note, and the Registrar shall thereby be authorized to authenticate, date and deliver the Note, provided, however, that the principal amount of the Note authenticated by the Registrar shall not exceed the authorized principal amount of the Note less previous retirements. The Registrar shall not be required to transfer or exchange the Note during the period beginning at the close of business on the 15<sup>th</sup> day of the month immediately prior to the maturity date of the Note nor to transfer or exchange the Note after notice calling the Note for redemption has been made, nor during a period of five (5) days next preceding mailing of a notice for redemption of principal of the Note. No beneficial interests in the Note shall be assigned, except in accordance with the procedures for transferring the Note described above.

The person or entity in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of the Note shall be made only to the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

No service charge shall be made for any transfer of the Note, but the City or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer of the Note.

SECTION 7. The Note shall be prepared in substantially the form attached hereto as Exhibit B.

SECTION 8. Under the Chicago Lakeside Development Phase 1 Redevelopment Agreement, Developer has agreed to perform construction and redevelopment work on the Phase 1 Project Property necessary for the Phase 1 Project. The eligible costs of such construction and redevelopment up to the amount not to exceed \$98,128,919 shall be deemed to be a disbursement of the proceeds of the Note, and the outstanding principal amount of the Note shall be increased by the amount of such advance. The principal amount outstanding of the Note shall be the amount of principal indicated in such Note on its date of issuance, or the sum of advances made under a form of certificate of expenditure (the "Certificate of Expenditure") executed by the Commissioner (or his or her designee) and authenticated by the Registrar, in accordance with the Chicago Lakeside Development Phase 1 Redevelopment Agreement, minus any principal amount paid on such Note and other reductions in principal as provided in the Chicago Lakeside Development Phase 1 Redevelopment Agreement. A Certificate of Expenditure shall not be valid or obligatory under this ordinance unless or until authenticated by the Registrar by manual signature. The City shall not execute Certificates of Expenditure that total in excess of \$98,128,919. Upon execution of a Certificate of Expenditure, the Registrar shall promptly send the Certificate of Expenditure to the Registered Owner and retain a copy with the Register. The Certificate of Expenditure for the Note shall be in substantially the form attached hereto as Exhibit C.

SECTION 9. The principal of the Note shall be subject to prepayment and redemption at any time, without penalty, as provided in the form of Note attached herein. As directed by the Commissioner, the Registrar shall proceed with redemption without further notice or direction from the City.

SECTION 10. The Registrar shall note on the payment schedule attached to the Note the amount of any payment of principal or interest on the Note, including the amount of any redemption, and the amount of any reduction in principal under the Chicago Lakeside Development Phase 1 Redevelopment Agreement.

SECTION 11. The Note hereby authorized shall be executed and delivered to Developer and shall be paid and have such security and shall have such priorities all as provided in the Chicago Lakeside Development Phase 1 Redevelopment Agreement.

SECTION 12. (a) Special Tax Allocation Fund. Under the T.I.F. Ordinance, the City has created a special fund, designated as the Chicago Lakeside Phase 1 Redevelopment Project Area Special Tax Allocation Fund (the "Chicago Lakeside Phase 1 T.I.F. Fund.")

The Treasurer of the City is hereby directed to maintain the Chicago Lakeside Phase 1 T.I.F. Fund as a segregated interest-bearing account, separate and apart from the General Fund or any other fund of the City, with a bank which is insured by the Federal Deposit Insurance Corporation or its successor. Under the T.I.F. Ordinance, all incremental ad valorem taxes received by the City for the Redevelopment Area are to be deposited into the Chicago Lakeside Phase 1 T.I.F. Fund.

(b) Chicago Lakeside Development Phase 1 Developer Account. There is hereby created within the Chicago Lakeside Phase 1 T.I.F. Fund a special account to be known as the "Chicago Lakeside Development Phase 1 Developer Account". The City shall promptly designate and deposit into the Chicago Lakeside Development Phase 1 Developer Account the incremental taxes defined as the "Available Incremental Taxes" in the Chicago Lakeside Development Phase 1 Redevelopment Agreement which have been deposited into the Chicago Lakeside Phase 1 T.I.F. Fund after the execution and delivery of the Chicago Lakeside Development Phase 1 Redevelopment Agreement.

(c) Pledge of Chicago Lakeside Development Phase 1 Developer Account. The City hereby assigns, pledges and dedicates the Chicago Lakeside Development Phase 1 Developer Account, together with all amounts on deposit in the Chicago Lakeside Development Phase 1 Developer Account: (i) to the payment of the Note, subject to the provisions and limitations of the Chicago Lakeside Development Phase 1 Redevelopment Agreement. Any monies on deposit in the Chicago Lakeside Development Phase 1 Developer Account that are forfeited under the terms of the Chicago Lakeside Development Phase 1 Redevelopment Agreement shall be transferred and deposited in the Chicago Lakeside Phase 1 T.I.F. Fund. Upon deposit, the monies on deposit in the Chicago Lakeside Development Phase 1 Developer Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the Chicago Lakeside Phase 1 T.I.F. Fund. All monies on deposit in the Chicago Lakeside Development Phase 1 Developer Account shall be used to pay the principal of and interest on the Note, at maturity or upon payment or redemption prior to maturity, each in accordance with its terms, which payments from the Chicago Lakeside Development Phase 1 Developer Account are hereby authorized and appropriated by the City. Upon payment of all amounts due under the Note in accordance with its respective terms, the amounts on deposit in the Chicago Lakeside Development Phase 1 Developer Account shall be deposited in the Chicago Lakeside Phase 1 T.I.F. Fund of the City and the Chicago Lakeside Development Phase 1 Developer Account shall be closed.

SECTION 13. The Note is a special limited obligation of the City, and is payable solely from amounts on deposit in the Chicago Lakeside Development Phase 1 Developer Account (or such other funds in the Chicago Lakeside Phase 1 T.I.F. Fund as the City, in its sole discretion may determine), and shall be a valid claim of the registered owners thereof only against said sources. The Note shall not be deemed to constitute an indebtedness or a loan against the general taxing powers or credit of the City, within the meaning of any constitutional or statutory provision. The registered owner of the Note shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the Note.

SECTION 14. Monies on deposit in the Chicago Lakeside Development Phase 1 Developer Account may be invested as allowed under Section 2-32-520 of the Municipal Code of the City of Chicago. Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the Note.

SECTION 15. The provisions of this ordinance shall constitute a contract between the City and the registered owner(s) of the Note. All covenants relating to the Note are enforceable by the registered owner(s) of the Note.

SECTION 16. This ordinance shall serve as a declaration of official intent so as to satisfy the "official intent requirement" of Treasury Regulations Section 1.150-2.

SECTION 17. The City has determined to undertake certain capital improvements with respect to the Phase 1 Project. The City anticipates that monies, other than the proceeds of any outstanding debt of the City; will be expended by the City with respect to such capital improvements.

SECTION 18. The City reasonably expects to be reimbursed for such expenditures with proceeds of the Bonds. The maximum principal amount of Bonds expected to be issued for reimbursements of such expenditures is \$100,000,000.

SECTION 19. No funds from sources other than the debt referred to in Section 18 are, or are expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the City, or any entity controlled by the City pursuant to their respective budget or financial policies with respect to the expenditures mentioned in Section 17. This declaration of official intent is consistent with the budgetary and financial circumstances of the City.

SECTION 20. The Mayor, the Comptroller, the City Clerk, the Commissioner (or his or her designee), the Corporation Counsel and the other officers and employees of the City are each hereby 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 21. 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 22. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 23. This ordinance shall be in full force and effect immediately upon its passage.

Exhibits "A", "B" and "C" referred to in this ordinance read as follows:



*Exhibit "A".*  
(To Ordinance)

*Chicago Lakeside Development Phase 1  
Redevelopment Agreement.*

This Chicago Lakeside Development Phase 1 Redevelopment Agreement (the "**Agreement**") is made as of this \_\_\_\_\_, 2010, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Community Development ("**DCD**"), and Chicago Lakeside Development, LLC, a Delaware limited liability company ("**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 and 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. (2008 State Bar Edition), as amended from time-to-time (the "**Act**"), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

C. **City Council Authority:** To induce redevelopment under the provisions of the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on May 12, 2010: (1) "An Ordinance of the City of Chicago, Illinois Approving a Tax Increment Redevelopment Plan for the Chicago Lakeside Development – Phase 1 TIF Redevelopment Project Area" (the "**TIF Plan Ordinance**"); (2) "An Ordinance of the City of Chicago, Illinois Designating the Chicago Lakeside Development – Phase 1 Redevelopment Project Area as a Redevelopment Project Area Pursuant to Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Chicago Lakeside Development – Phase 1 Redevelopment Project Area" (the "**TIF Adoption Ordinance**"). Collectively the three ordinances are defined as the "**TIF Ordinances**". The redevelopment project area (the "**Redevelopment Area**") is legally described in Exhibit A.

D. **The Overall Project:** Developer proposes to redevelop the approximately 369 acre tract (net of more than 106 acres of surrounding public park areas) of land that is a portion of the former site of U.S. Steel's South Works plant (the "**Site**"). The Site has been vacant since the early 1990s. The Site is roughly bounded by 79<sup>th</sup> Street, the Lake Michigan shoreline, 87<sup>th</sup> Street, a line approximately 150 feet east of and parallel to Avenue O, 92<sup>nd</sup> Street, Avenue O, 89<sup>th</sup> Street, Mackinaw Avenue, 87<sup>th</sup> Street, Burley Avenue, 86<sup>th</sup> Street, Green Bay Avenue, 83<sup>rd</sup> Street, Mackinaw Avenue, 82<sup>nd</sup> Place, and Brandon Avenue. Developer will undertake and complete a master development strategy and one or more master development plans, which will include designation of uses, bulk and densities, street grid, streetscape improvements, demolition, ground improvements, infrastructure installation, environmental remediation and other horizontal work. All work proposed for the Site is defined collectively as the "**Overall Project**". Different components of the Overall Project may be undertaken by Developer, Affiliates of Developer and by other related and unrelated entities.

The Site is unique because it is composed of landfill in the form of slag and other fill materials primarily generated in the operation of the former steel making facility. The Site is further challenged by the existence of the concrete foundations of the former Site buildings, miles of infrastructure for the former steel making operation, building rubble and debris and impacted surface and subsurface conditions.

The Overall Project is planned to serve as a new neighborhood and town center for all of South Chicago and is expected to be a catalyst for other infill development. The Overall Project will also provide mixed-use retail/commercial/residential development in a location long under-served by such uses with a quality of community development that will add substantial benefits to this area of the City. A map of the Overall Project area and its location in the City is Exhibit B-1.

E. **The Planned Development:** The master plan for the Overall Project created by Developer and its design team with input from City departments and staff (the "**Master Plan**") contemplates developing the Site in 5 areas and multiple phases. The Chicago Plan Commission adopted the Master Plan as the policy of the City on April 15, 2010, and the Master Plan is intended to provide guidance and direction to City staff and departments when they are evaluating proposed plans and requests for zoning changes and other City approvals related to later phases of the Overall Project. Developer's application for zoning of Area 1 of the Master Plan as a Planned Development District was recommended for approval by the Chicago Plan Commission on April 15, 2010, and approved by the City Council on June 9, 2010, and is defined in this Agreement (as the PD may be amended) as the "**PD**". A copy of the PD for Area 1 is Exhibit B-2. A legal description of the private portion of Area 1, which is defined in this Agreement as the "**Phase 1 Project Property**", is Exhibit B-3. The Phase 1 Project Property will be the location for the Phase 1 Project (as defined below). The Phase 1 Project Property is located in the northwest area of the Site and is generally bounded by relocated U.S. Route 41 to the North and East, 83<sup>rd</sup> Street to the South and S. Brandon Avenue to the West.

F. **Phase 1 Project:** Developer will redevelop the Phase 1 Project Property to be a high-quality, mixed-use retail/residential development that will create a new neighborhood town center in the City, in accordance with the requirements of this Agreement and the PD. Such redevelopment work is defined in this Agreement as the "**Phase 1 Project**" and is sometimes referred to herein as the "**Project**". The Phase 1 Project will consist of two major components: the "**Vertical Development Area**" and the "**Pad Sale Area**".

The Vertical Development Area is to be a neighborhood town center environment consisting of: (i) approximately 844,000 gross square feet of retail floor area to be anchored by major retail anchors and numerous smaller retailers, and (ii) approximately 250 rental residential units to be constructed above the first floor retail space in order to create an urban environment. A number of these units will be Affordable Units (as defined in Schedule A). For this Vertical Development Area, Developer intends to prepare the Phase 1 Project Property, construct all necessary Phase 1 Project Property site improvements and construct the vertical improvements.

For the Pad Sale Area, Developer intends to prepare the pad sites and sell the finished development pads to residential developer(s) to construct the buildings. The Pad Sale Area work will include the site preparation and provision of pads for the following: (i) approximately 136 for-sale residential townhome/2-flat units, all targeted to be Affordable Units, and (ii) approximately 598 rental residential units contained within three high-rise buildings along the north end of the Phase 1 Project Property adjacent to U.S. Route 41.

In addition, Developer will construct all necessary public and private on-site infrastructure and related utilities for the portion of the Phase 1 Project to be undertaken by Developer and integral to the development of the applicable portion of the Phase 1 Project in accordance with the requirements of this Agreement and the PD (except that the City will undertake the construction of a new segment of U.S. Route 41 to be located between East 79th Street and East 87th Street). A site plan for the Phase 1 Project is Exhibit B-4. Depending on market conditions, the rental residential units may be offered for sale and the for-sale residential units may be offered for rent. The completion of the Phase 1 Project would not reasonably be anticipated without the financing contemplated in this Agreement.

G. **Redevelopment Plan:** The Project will be carried out in accordance with this Agreement and the City of Chicago, Chicago Lakeside Development – Phase 1 Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project, dated October 29, 2009, revised November 24, 2009, revised March 5, 2010 and approved by the City through the TIF Plan Ordinance (the "**Redevelopment Plan**") attached as Exhibit C, as amended from time-to-time.

H. **City Financing and Assistance:** Subject to Developer fulfilling its obligations under this Agreement required to obligate the City to do so, the City will make a Note (as defined below in Section 4.03(c)) and issue Bonds (as defined below in Section 4.10(e)), in the amounts stated in Section 4.03, to reimburse Developer out of Available Incremental Taxes (as defined below) as provided in this Agreement for the costs of the TIF-Funded Improvements (as

defined below) under the terms and conditions of this Agreement. In addition, the City will, subject to Developer fulfilling its obligations under this Agreement required to obligate the City to do so, issue Bonds (as defined below) secured by or otherwise payable from Incremental Taxes (as defined below) as provided in a bond ordinance (the "**Bond Ordinance**"), at a later date as described and conditioned in Section 4.10. The proceeds of the Bonds may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Available Incremental Taxes, or in order to reimburse the City for the costs of TIF-Funded Improvements.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **AGREEMENT:**

#### **ARTICLE ONE: INCORPORATION OF RECITALS**

The recitals stated above are an integral part of this Agreement and are hereby incorporated into this Agreement by reference and made a part of this Agreement.

#### **ARTICLE TWO: DEFINITIONS**

The definitions stated in Schedule A and those definitions stated in the recitals and preamble are hereby incorporated into this Agreement by reference and made a part of this Agreement.

#### **ARTICLE THREE: THE PHASE 1 PROJECT**

##### **3.01 The Phase 1 Project.**

(a) The currently estimated Phase 1 Project construction start date is: June, 2013. The currently estimated Phase 1 Project completion date is: June, 2017.

(b) The Phase 1 Project construction start date will occur on the latest of: (i) the estimated construction start date stated above, (ii) the issuance of the Phase 1 Commencement Certificate (as defined in Section 4.10(m)), and (iii) the completion of construction and opening to public traffic of the segment of U.S. Route 41 extending between East 79<sup>th</sup> Street and East 87<sup>th</sup> Street ("**Route 41 Completion**").

(c) Any Phase 1 Project construction start date will be subject to the provisions of Section 18.17 (Force Majeure), and the receipt by Developer of all applicable permits and Phase 1 Project approvals. .

(d) Developer's work on the Phase 1 Project will at all times comply with the requirements and Developer undertakings (both on-site or off-site) stated in the PD.

3.02 **Scope Drawings, Plans and Specifications and Boundary Survey.** Developer has delivered the Scope Drawings, Plans and Specifications (as reflected in the PD) and

boundary survey for the Phase 1 Project Property to DCD and DCD has approved them or DCD has agreed to approve them as a post-closing item promptly upon receipt. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications within the scope of Section 3.04 will be submitted to DCD as a Change Order under Section 3.04. The Scope Drawings and Plans and Specifications will at all times conform to the Redevelopment Plan, and to all applicable Federal, State and local laws, ordinances and regulations and to the requirements and undertakings stated in the PD. Developer will submit all necessary documents to the City's Department of Buildings, Department of Transportation, and to such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Phase 1 Project.

3.03 **Project Budget.** Developer has furnished to DCD, and DCD has approved, a Phase 1 Project Budget which is Exhibit D-1 (the "**Project Budget**"), showing total costs for the Phase 1 Project in an amount of approximately \$396,693,757. Developer hereby certifies to the City that: (a) it believes that the amount of Lender Financing and/or Equity specified in the Project Budget will be available and sufficient to complete the Phase 1 Project as of Bond Closing (as defined in Section 4.10(r)), and acknowledges that such availability and sufficiency is a condition to Bond Closing; and (b) the Project Budget is true, correct and complete in all material respects. Developer will promptly deliver to DCD copies of any Change Orders with respect to the Phase 1 Project Budget as provided in Section 3.04.

#### 3.04 **Change Orders.**

(a) Except as provided in subparagraph (b) below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Phase 1 Project must be submitted by Developer to DCD concurrently with the progress reports described in Section 3.07; provided, however, that any Change Orders relating to any of the following must be submitted by Developer to DCD for DCD's prior written approval: (i) a reduction by more than five percent (5%) in the square footage of the Phase 1 Project from the square footage approved by DCD under Section 3.02, or (ii) material changes in the basic use of the Phase 1 Project Property or the Phase 1 Project, or (iii) a delay in the Phase 1 Project start date, or (iv) a delay in the Phase 1 Project completion date, by more than 6 months, or (v) increases in the Phase 1 Project Budget by more than 10 percent. The City will not unreasonably delay, withhold or condition its consent to a proposed Change Order. Developer will not authorize or permit the performance of any work relating to any Change Order requiring DCD's prior written approval or the furnishing of materials in connection therewith prior to the receipt by Developer of DCD's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, will contain a provision to this effect. An approved Change Order will not be deemed to imply any obligation on the part of the City to increase the amount of City Funds or to provide any other additional assistance to Developer.

(b) Notwithstanding anything to the contrary in this Section 3.04, Change Orders costing less than Two Hundred Fifty Thousand Dollars (\$250,000) each, to an aggregate amount not exceeding 5% of the Project Budget, or required to avoid a construction emergency situation or preserve existing work, do not require DCD's prior written approval as stated in this Section 3.04, but DCD must be notified in writing of all such Change Orders and Developer, in

connection with such notice, must identify to DCD the source of funding for any resulting increase in the Project Budget in the progress reports described in Section 3.07.

(c) DCD must also approve in writing the reconfigurations of the Phase 1 Project causing the various leasable square footages of the major components (e.g., residential, retail, and parking) to vary in the aggregate by more than 5% from those initially approved by DCD under Section 3.02 (Scope Drawings, Plans and Specifications and Boundary Survey).

3.05 **DCD Approval**. Any approval granted by DCD under this Agreement of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only, and any such approval does not affect or constitute any approval required by any other City department under any City ordinance, code, regulation, or any other governmental approval, nor does any such approval by DCD under this Agreement constitute approval of the utility, quality, structural soundness, safety, habitability, merchantability, or investment quality of the Phase 1 Project in whole or in part. Developer will not make any verbal or written representation to anyone to the contrary.

3.06 **Other Approvals**. Any DCD approval under this Agreement will have no effect upon, nor will it operate as a waiver of, Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals). DCD agrees to provide cooperation and non-financial assistance to Developer's efforts to obtain all other governmental approvals required for the Phase 1 Project (including approvals of all required access to the Site) from all government agencies in a timely manner; provided, however, that Developer is solely responsible for obtaining its required governmental approvals. Developer will not commence construction of the Phase 1 Project until Developer has obtained all necessary permits and approvals (including DCD's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required under this Agreement.

3.07 **Progress Reports and Survey Updates**. After the Bond Closing (as defined in Section 4.10(r)), on or before the 15th day of each reporting month, Developer will provide DCD with written quarterly construction progress reports detailing the status of the Phase 1 Project, including a revised completion date, if necessary (with any delay in completion date being considered a Change Order, requiring DCD's written approval under Section 3.04). Developer must also deliver to the City written monthly progress reports following commencement of construction of the Phase 1 Project detailing compliance with the requirements of Section 8.08 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment) (collectively, the "City Requirements"). Developer will not commence construction of the Phase 1 Project until Developer has obtained all necessary permits and approvals (including DCD's approval of the Scope Drawings and Plans and Specifications) and Proof of the General Contractor's and each subcontractor's bonding as required under this Agreement. If the reports reflect a shortfall in compliance with the requirements of Sections 8.08, 10.02 and 10.03, then there must also be included a written plan from Developer acceptable to DCD to address and cure such shortfall. At the time of Developer's request for a COC (as defined in Section 7.01), and upon the request of DCD, Developer will provide 3 copies of an updated Survey to DCD reflecting improvements made to the Phase 1 Project Property.

3.08 **Inspecting Agent or Architect.** An independent agent or architect, if any, selected by the lender providing Lender Financing (which may be the Developer's architect) will also act as the inspecting agent or architect for DCD for the Phase 1 Project, and any fees and expenses connected with its work or incurred by such independent agent or architect will be solely for Developer's account and will be promptly paid by Developer. The inspecting agent or architect shall perform periodic inspections with respect to the Phase 1 Project, providing certifications with respect thereto to DCD, if DCD requests same, prior to requests for disbursement for costs related to the Phase 1 Project. Further, as provided in the PD, Developer will provide the Chicago Department of Transportation with certain requested engineering design and inspection services for public way improvements and be solely responsible for the costs of such services.

3.09 **Barricades and Fencing.** Prior to commencing any construction requiring barricades, Developer will 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, rules and regulations. DCD retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content, and design of all barricades (other than the name and logo of the Developer or the Phase 1 Project). As provided in the PD, Developer will be responsible for the requirement to erect and maintain site access control fencing.

3.10 **Signs and Public Relations.** If requested by DCD, Developer will erect and maintain in a conspicuous location on the Phase 1 Project Property during the Phase 1 Project a sign of size and style approved by the City, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Phase 1 Project and any other pertinent information regarding Developer and the Phase 1 Project in the City's promotional literature and communications.

3.11 **Utility Connections.** Developer may connect all on-site water, sanitary, storm and sewer lines constructed as a part of the Phase 1 Project to City utility lines existing on or near the perimeter of the Property, provided Developer first complies with all City requirements governing such connections, including the payment of generally applicable fees and costs related thereto.

3.12 **Permit Fees.** In connection with the Phase 1 Project, Developer is obligated to pay only those building, permit, engineering, tap on, and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

3.13 **Accessibility for Disabled Persons.** Developer acknowledges that it is in the public interest to design, construct and maintain the Phase 1 Project in a manner which promotes, enables, and maximizes universal access throughout the Phase 1 Project. Plans for all buildings on the Phase 1 Project Property and improvements on the Phase 1 Project Property will be reviewed and approved by the Mayor's Office for People with Disabilities ("MOPD") to ensure compliance with all applicable laws and regulations related to access for persons with disabilities and to promote the highest legal standard for accessibility.

3.14 **Additional Project Features.**

(a) **Landscaping.** Developer will perform all landscaping work consistent with the landscaping requirements stated in the City of Chicago Municipal Code.

3.15 **Environmental Requirements and Water Management.**

(a) All components of the Phase 1 Project will be compliant with the applicable portions of the City's South Chicago Leadership in Energy and Environmental Design ("LEED") Neighborhood Development ("ND") (collectively, "LEED ND") Initiative Area Plan as evidenced by Developer's provision of the requisite registrations and certifications to the City.

(b) Sanitary sewer facilities shall be provided on the Phase 1 Project Property in a manner substantially consistent with the "Conceptual Sanitary Sewer Flow Exhibit" prepared by SPACECO, Inc., dated June 15, 2005 and last revised December 15, 2006. Storm water management shall be provided on the Phase 1 Project Property in a manner substantially consistent with the "USX Southworks Redevelopment Final Storm Water Management Plan Summary Report" prepared by Christopher B. Burke Engineering, Ltd., dated January 2006 and last revised March 2006. The development of the Phase 1 Project Property also shall be in accordance with the City of Chicago Stormwater Management Ordinance Manual dated January 2009 and the 2009 Regulations for Sewer Construction and Stormwater Management dated January 2009, and in effect as of October 1, 2009. Other infrastructure improvements, except as described otherwise on the plans included in the PD, will be provided in accordance with Infrastructure Plans for the Phase 1 Project Property prepared by SPACECO, Inc. dated July 20, 2009.

(c) In addition to the above requirements, the Phase 1 Project shall meet the standards set forth in the City's Sustainable Development Policy Matrix for TIF-assisted projects (the "**Matrix**):

(i) **Green Roofs and Shading**

Per the City's Sustainable Development Policy Matrix for TIF-assisted projects:

- (A) 100% of the net usable roof area of the habitable buildings in the Phase 1 Project shall be constructed with green roofs, or
- (B) 50% of the roof area of the Phase 1 Project shall be constructed with green roofs, and 50% of Vehicular Use Areas shall be shaded within 5 years of completion of construction of these areas

(ii) **LEED Certification of Buildings.** Per the Matrix, 100% of the buildings in the Phase 1 Project will attain LEED certification.



## ARTICLE FOUR: FINANCING

4.01 **Total Project Cost and Sources of Funds.** The cost of the Phase 1 Project is estimated to be \$396,693,757 to be applied in the manner stated in the Project Budget. Such costs will be funded from the following sources:

Equity (subject to <u>Section 4.06</u> )	\$ 75,000,000
Lender Financing	225,808,173
Net Proceeds of Bonds (1)	<u>95,885,584</u>
<b>ESTIMATED TOTAL</b>	<b>\$396,693,757</b>

(1) The amount of Bond Proceeds will be set based on the final sizing and underwriting parameters set forth in Section 4.10 below and shall be limited to the amount necessary to pay Bondable Costs (as defined in Section 4.10(i) below, generally hard and soft costs associated with Site preparation, infrastructure and dedicated public improvements). A maximum of \$3.0 million of TIF-Eligible planning costs associated with designation of the Redevelopment Area and attributable to the Phase 1 Project (as determined by the City Department of Law) will be reimbursed with Net Bond Proceeds; the remainder, subject to adequate projected Incremental Taxes, will be reimbursable through the Note to be issued by the City to the Developer as described in Section 4.03(c) below.

4.02 **Use of Funds.** Equity and Lender Financing and Bond Proceeds, will be used to pay all Project costs, including but not limited to costs of TIF-Funded Improvements.

4.03 **City Funds.**

(a) **Uses of City Funds.**

(i) Any principal or interest paid under the Note (as defined below in Section 4.03(c)), Bond Proceeds (as defined below in Section 4.10(e)(ii)), and any other funds expended by the City under this Agreement or otherwise related to the Phase 1 Project or to the TIF-Funded Improvements are defined as "**City Funds**".

(b) **Sources of City Funds.**

(i) Subject to the terms and conditions of this Agreement and the completion of underwriting and due diligence, the City hereby agrees to issue a Note and Bonds (as defined below in Section 4.10(e)(i)), and to make payments of City Funds pursuant to the terms of the Note and to make Net Bond Proceeds available to pay the costs of certain TIF-Funded Improvements related to the Phase 1 Project, all as more fully set forth herein.

(ii) City Funds may be used to reimburse Developer only for costs of TIF-Funded Improvements. Exhibit E states, by line item, the TIF-Funded Improvements for the Phase 1 Project contingent upon receipt by the City of documentation satisfactory in form and substance to DCD evidencing such costs and their respective eligibility as a Redevelopment Project Cost.

(c) **Issuance of the Note.** On the Closing Date, the City will issue to Developer a taxable Note made payable to Developer (the "Note") in the form described in **Exhibit M** with the following terms and conditions.

(i) **Principal.** The initial principal amount of the Note will be set equal to the amount of costs for TIF-Funded Improvements which have been paid by Developer as of the Closing Date up to a maximum principal amount of \$98,128,919. Such principal amount will be evidenced by a certificate provided by the City based on evidence of TIF-Funded Improvements provided by Developer. Such certificate is defined in this Agreement as a "**Certificate of Expenditure**". After the initial issuance of the Note, if the principal balance of the Note is less than \$98,128,919, then the principal balance of the Note will be increased when the City issues additional Certificate(s) of Expenditure up to a maximum of \$98,128,919. The principal balance of the Note will be subject to determination by the City and Developer based upon the actual Project Budget for the Phase 1 Project that is finalized by the City and Developer prior to the issuance of the Bonds (as described below in **Section 4.10**). TIF-Funded Improvements will be certified by the Developer and approved by the City on the Closing Date and on a monthly basis thereafter.

(ii) **Interest.** The interest rate on the Note will be set at the Closing Date at a rate equal to the median value of the FINRA/Bloomberg Corporate BBB Bond Index for 15 reported Business Days prior to the Closing Date plus 100 basis points, but in no event greater than 8.5%. Interest will compound annually.

(iii) **Term.** The Note will be issued on the Closing Date and will have a term of 20 years. Upon Developer's request, the City will at Bond Closing retire the Note by means of re-issuance of, and delivery to Developer of, a new original of the Note having an original principal amount equal to the sum of (a) the principal and interest due on the Note as of Bond Closing, and (b) the amount of costs incurred by Developer for TIF-Funded Improvements that is neither reimbursed with Net Bond Proceeds (as defined below in **Section 4.10(c)**) nor included as of the Closing Date in the principal amount of the Note (with all other terms and provisions of the Note issued at Bond Closing to be consistent with the terms of this Agreement), which new original of the Note will have a term of 20 years following the date of its issuance, but in no event will such term exceed the term of the Redevelopment Area.

(iv) **Payments of Principal and Interest.**

(A) Interest on the Note will begin to accrue at the date of issuance as to the then outstanding principal amount. Amortization of principal will be over the term of 20 years, as Available Incremental Taxes are or become available for payments.

- (B) Available Incremental Taxes only will be used to pay the principal of and interest on the Note, and on unpaid interest, if any. In the ordinance authorizing the issuance of the Note, the City will establish an account denominated the: "Chicago Lakeside Development Developer Account" within the Chicago Lakeside Development – Phase I Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the Chicago Lakeside Development Developer Account. The Note will have a first lien on 100% of Available Incremental Taxes.
- (C) Payments on the Note will begin upon issuance of a Phase I Commencement Certificate, and will be made by the City upon Developer's (or other Note payee's) submission to the City of a Requisition Form (in the form attached hereto as Exhibit N) ("**Requisition Form**") along with documentation satisfactory in form and substance to DCD evidencing that Developer has incurred the costs of TIF-Funded Improvements for which the Developer is seeking reimbursement payment through the Note (which may be in the form of a Certificate of Expenditure).

(v) **Insufficient Available Incremental Taxes.** If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any scheduled payment on the Note, then: (1) the City will not be in default under this Agreement or the Note, and (2) due but unpaid scheduled payments (or portions thereof) on the Note will be paid as provided in this Section 4.03 as promptly as funds become available for their payment. Interest per annum at the rate set when the Note is issued will accrue on any principal or interest payments which are unpaid because of insufficient Available Incremental Taxes.

(vi) **Prepayment.** The Note may be prepaid in whole or in part at any time without premium or penalty.

(vii) **Note Transfer.** Upon surrender for transfer of the Note at the principal office of the Comptroller of the City, as registrar and paying agent (the "**Registrar**"), duly endorsed by, or accompanied by: (i) a written instrument or instruments of transfer in form satisfactory to the Registrar; (ii) an investment representation in form satisfactory to the City and duly executed by the registered owner or his or her attorney duly authorized in writing; and (iii) the written consent of the City evidenced by the signature of the Commissioner (or his or her designee) on the instrument of transfer, the City shall execute and the Registrar shall authenticate, date and deliver in the name of the transferee or transferees, a new, fully registered Note of the same maturity, of authorized denomination, and for a like aggregate principal amount. The execution by the City of the fully registered Note shall constitute full and due authorization of the Note, and the

Registrar shall thereby be authorized to authenticate, date and deliver the Note, provided, however, that the principal amount of the Note authenticated by the Registrar shall not exceed the authorized principal amount of the Note less previous retirements.

4.04 **RESERVED.**

4.05 **Treatment of Prior Expenditures.** Only those expenditures made by Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DCD and approved by DCD as satisfying costs covered in the Project Budget, will be considered previously contributed Equity or Lender Financing, if any, hereunder (the "**Prior Expenditure(s)**"). DCD has the right, in its sole discretion, to disallow any such expenditure (not listed on Exhibit H) as a Prior Expenditure as of the date of this Agreement. Exhibit H identifies the prior expenditures approved by DCD as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements will not be reimbursed to Developer, but will reduce the amount of Equity and/or Lender Financing, if any, required to be contributed by Developer under Section 4.01.

4.06 **Cost Overruns.** If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available under Section 4.03, Developer will be solely responsible for such excess costs, and will hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and from any and all costs and expenses of completing the Project in excess of the Project Budget.

4.07 **RESERVED.**

4.08 **RESERVED.**

4.09 **RESERVED.**

4.10 **The Bonds.**

(a) This Section 4.10(a) shall not be construed as a limitation of the City's agreement with respect to City Funds as set forth in Section 4.03(b). It is the anticipation of the parties hereto that, prior to Bond Closing (as defined in Section 4.10(r) hereof), this Agreement will have to be amended and restated pursuant to Section 18.01 hereof (as amended and restated, the "**Amended and Restated Agreement**") in order to accommodate and document in further detail, among other things, the agreed terms and conditions regarding the issuance of the Bonds (as defined in Section 4.10(e)(i) hereof) and the expenditure of the proceeds thereof, the final forms of the Phase 1 Project Budget, Scope Drawings and original Plans and Specifications, and confirmation of the Developer Phase 1 Scope (as described below in Section 4.10(f)(B)), and the ongoing responsibility for operation and maintenance of the completed Phase 1 Project or applicable portions thereof. The final form of any Amended and Restated Agreement will be subject to approval by the City Council pursuant to a future ordinance separate from the ordinance authorizing the City's execution of this Agreement and issuance of the Note under this Agreement. The parties' present intentions and expectations with respect to the Bonds are set forth in Sections 4.10(b) through (r) hereof below.

(b) Costs of issuance of the Bonds, including but not limited to payment of fees of special assessment counsel selected and retained by the City ("**Special Assessment Counsel**"), will be borne by the Developer until the Bonds are issued, at which time such reasonable and customary Bond closing costs will be payable and refunded from Bond Proceeds, subject to the approval of bond counsel.

(c) Upon the later of (i) Developer's request (which may be delayed by Developer until Route 41 Completion) and (ii) the issuance of the Phase 1 Commencement Certificate (as defined in Section 4.10(m)(ii) hereof), the City will issue the Bonds as follows: the City will issue one or more series of Bonds to achieve net proceeds thereof ("**Net Bond Proceeds**") equal to the lesser of: (A) the amount that can be successfully financed based on the Sizing and Underwriting Parameters set forth in Section 4.10(f) hereof, and (B) Bondable Costs as set forth in Section 4.10(j) hereof (currently estimated at \$95,885,584). Net Bond Proceeds will be made available for distribution in accordance with the TIF Construction Escrow (as defined in Section 4.10(m)(iii) hereof) (exclusive of any debt service coverage, capitalized interest, debt service reserve fund, or closing costs) simultaneously described in the following Sections 4.10(d) and (e) hereof.

(d) **General Obligation Bonds.**

(i) The City will issue one or more series of fixed-rate general obligation bonds (the "**G.O. Bonds**") underwritten by the first 50% of the Available Incremental Taxes (see "**Sizing and Underwriting Parameters**" in Section 4.10(f) hereof). The City will pledge its full faith and credit to secure payment of the G.O. Bonds. Notwithstanding the City's pledge of its full faith and credit and any general *ad valorem* property tax levy imposed by the City for payment of the G.O. Bonds, it is intended that the City will use Available Incremental Taxes to abate such levy and make payment on the G.O. Bonds. The G.O. Bonds will have a first lien on 100% of the Available Incremental Taxes.

(ii) The proceeds of the G.O. Bonds (the "**G.O. Bond Proceeds**") shall be used to pay those costs of the Phase 1 Project (collectively, "**Phase 1 Project Costs**") that are TIF-Funded Improvements listed on Exhibit E hereto (including but not limited to Redevelopment Project Costs under Section 3(q)(1) of the Act incurred by the City and/or Developer in direct connection with the preparation of the Phase 1 Redevelopment Plan and related eligibility report and the designation of the Redevelopment Area, provided that any such planning and preparation costs to be incurred are expected to be advanced by Developer subject to reimbursement from the proceeds of the G.O. Bonds (under the parameters described in Section 4.05 hereof regarding Prior Expenditures)), with such reimbursement including those Redevelopment Project Costs that are not eligible for payment pursuant to Illinois law regarding special assessments (including but not limited to 65 ILCS 5/9-2-1 et seq. (the "**Special Assessment Law**") and 50 ILCS 460/1, et seq. (the "**Special Assessment Supplemental Bond and Procedures Act**") or Federal law, such as site preparation costs not associated with local public improvements.

(iii) Payment of the G.O. Bonds will be further supported by an unconditional, irrevocable standby letter of credit posted by the Developer at Bond Closing with the City as the sole beneficiary from a bank acceptable to the City in an amount equal to 110% of the maximum amount payable as interest and principal on the G.O. Bonds during any calendar year and substantially in the form attached as Exhibit F (the "**Unconditional, Irrevocable Letter of Credit**"). If a debt service reserve would otherwise be required for the G.O. Bonds, the Unconditional, Irrevocable Letter of Credit will be pledged to holders of the G.O. Bonds in lieu of this debt service reserve. Otherwise, the Unconditional, Irrevocable Letter of Credit is intended to provide the City with a backup funding source in the event Available Incremental Taxes are insufficient to service the G.O. Bonds, and to provide the City with a compliance remedy for certain events described in Section 15.02(b) hereof. The Unconditional, Irrevocable Letter of Credit shall be renewed and maintained throughout the term of the G.O. Bonds, but Developer shall not be required to restore any amounts that are drawn upon under the Unconditional, Irrevocable Letter of Credit by the City. Developer's obligation to renew and maintain the Unconditional, Irrevocable Letter of Credit will continue through the sooner of (A) the originally scheduled maturity of the G.O. Bonds, or (B) the full repayment of the G.O. Bonds or any replacement bonds secured by a general obligation pledge from the City issued to refinance the G.O. Bonds.

(e) **Special Assessment Bonds.**

(i) The City will issue one or more series of fixed-rate special assessment bonds (the "**S.A. Bonds**", and, together with the G.O. Bonds, the "**Bonds**") underwritten by the second 50% of Available Incremental Taxes (see "Sizing and Underwriting Parameters" in Section 4.10(f) hereof). Payment of the S.A. Bonds will be secured by a special assessment (the "**Special Assessment**") that the City will levy on the Phase 1 Project Property only, subject to the prior designation of the Phase 1 Project Property, or applicable portions thereof, as a special assessment area by the City pursuant to the Special Assessment Law and the Special Assessment Supplemental Bond and Procedures Act. Designation of the Phase 1 Project Property as a special assessment area and levy of the Special Assessment thereon shall require, among other things (as shall be confirmed by advice of Special Assessment Counsel), that: an engineer designated by the City's Board of Local Improvements ("**BOLI**") produce a so-called engineer's estimate of costs of the local public improvements to be financed by the S.A. Bonds; BOLI pass a so-called first resolution describing the Phase 1 Project, or applicable portion thereof, setting forth the estimated costs of the local public improvements to be financed by the S.A. Bonds and calling for a public hearing; such public hearing be held after legally sufficient notice; BOLI recommend that the designation and levy proceed; the City Council adopt an ordinance approving the designation and levy; a Special Assessment be prepared; and the Circuit Court of Cook County, upon petition and after legally sufficient notice, issue an order confirming the designation and levy, which the City agrees to undertake.

Notwithstanding the Special Assessment levy imposed by the City for payment of the S.A. Bonds, it is intended that, subject to approval by Bond Counsel and Special Assessment Counsel, the City will use Available Incremental Taxes to abate such levy and make payment on the S.A. Bonds. The S.A. Bonds will have a lien on all Available Incremental Taxes from the Redevelopment Area that is subordinate to the lien of the G.O. Bonds but superior to any other liens on Available Incremental Taxes.

(ii) The net proceeds of the S.A. Bonds (the "**S.A. Bond Proceeds**," and, together with the G.O. Bond Proceeds, the "**Bond Proceeds**") will be used to pay for local public improvements to be dedicated to a public agency (including the City) as permitted by the Illinois law regarding special assessments (including but not limited to the Special Assessment Law and the Special Assessment Supplemental Bond and Procedures Act). The local public improvements shall be constructed pursuant to plans and specifications approved by the applicable public agency, and such local public improvements and the estimated costs thereof will be listed in detail in an Amended and Restated Agreement or an exhibit thereto. Developer shall warrant the local public improvements for a period of one (1) year following the written acceptance thereof by the applicable public agency (provided that such acceptance shall not be unreasonably withheld or delayed). The City and Developer intend to configure the parameters of the Special Assessment such that the Special Assessment shall not: (A) impair or threaten to impair the affordability of the residential units specifically earmarked as Affordable Units pursuant to Recital F and Section 7.01 hereof, nor (B) be levied upon existing residences located outside the boundary of the Phase 1 Project Property but within the Redevelopment Area. The mechanism(s) by which the foregoing limitations are to be achieved is to be developed subject to approval by Special Assessment Counsel and will be set forth in sufficient detail in an Amended and Restated Agreement.

(f) **Sizing and Underwriting Parameters**. The sizing of the Bonds shall be based on projections of Available Incremental Taxes ("**TIF Revenue Projections**") prepared by Developer that are satisfactory to the City. Net Bond Proceeds shall be limited to the lesser of: (i) the amount that can be successfully financed based on the parameters set forth below in this Section 4.10(f) ("**Bond Capacity**"), and (ii) Bondable Costs as set forth in Section 4.10(j) hereof. These TIF Revenue Projections will incorporate commercially reasonable assumptions derived at the time of Bond Closing (as defined in Section 4.10(r) hereof), including without limitation the following:

- (A) Incremental Property Taxes from the portions of the Vertical Development Area for which sufficient Lender Financing and Equity sources to reach completion will be committed by Developer at the time of Bond Closing;
- (B) Incremental Property Taxes from the portions of the Pad Sale Area (or any other areas not to be completed directly by Developer) representing no more than 35% of the total

Incremental Property Taxes to be considered in the Bond sizing; that are supported by private financing commitments and/or sale commitments deemed sufficient for successful placement of the Bonds; and for which Developer will have secured commitments for sufficient Lender Financing and Equity (by admission of one or more additional members into Developer or capital commitments made by existing members of Developer) to reach completion of the related portion of the Phase 1 Project to be undertaken by Developer at the time of Bond Closing (the "Developer Phase 1 Scope");

- (C) Projected Incremental Taxes from the pre-sold portion of the residential tower sites within the Pad Sale Area as described in Section 4.10(m) hereof represent no less than 33% of the aggregate Incremental Taxes projected to be generated by the residential tower portions of the Pad Sale Area;
- (D) Reasonable, documented assumptions regarding future valuations of property based upon information provided in the Phase 1 Project plans, leases, private financing documents, and appropriate property tax comparables;
- (E) An assumption of 96% collection of extended/billed property taxes;
- (F) Absorption and phasing assumptions that are linked to specific supportable conclusions of market studies provided by Developer and deemed acceptable by the City to the extent that such market studies are required as part of the feasibility report required by underwriters and Bond purchasers at the time of Bond Closing, and executed leases as set forth in Section 4.10(m) hereof;
- (G) Accounting for observed trends in the effective property tax rate based on the Cook County Equalization Factor and applicable composite tax rate; and
- (H) Developer has provided soil/geotechnical studies confirming to the City's reasonable satisfaction that the development areas included in the TIF Revenue Projections are suitable for the densities, land uses, and layouts assumed in the TIF Revenue Projections.

The G.O. Bonds will be sized and structured such that, based on the projected flow of Available Incremental Taxes, pledged revenue, capitalized interest, the



Unconditional, Irrevocable Letter of Credit and other Bond reserves, a two-year delay in cash flow beyond what is projected would not cause the City to pay debt service on the Bonds with its general *ad valorem* property tax levy.

(g) **Make-Whole Amount.** If the City is required to make all or part of any debt service payments on the G.O. Bonds from the general *ad valorem* property tax levy, general funds of the City or any source other than Available Incremental Taxes, the amount of such funding shall be cumulatively recorded with interest accruing on an annual basis at the overall yield rate on the G.O. Bonds ("**Make-Whole Amount**"). The City shall have a right to be repaid up to the Make-Whole Amount from 100% of Available Incremental Taxes. This repayment right shall be subordinate to the lien of the Bonds on Available Incremental Taxes but senior to the lien on Available Incremental Taxes of any City Note(s) or other Redevelopment Area funding commitments.

(h) **Refunding.** The City shall retain the right to refund any and all funding obligations described in this Section 4.10 with bonds, notes or other instruments subject to the lien priorities set forth above and such reasonable repayment "call protection" provisions as may be required within the Bonds to achieve satisfactory marketability. The City shall not be obligated to refund any obligations at any time except as explicitly stated in the Amended and Restated Agreement.

(i) **Summary of City Financing Obligations and Repayment Streams.**

Financing Instrument	Repayment Source
General Obligation (G.O.) Bonds	Capitalized interest, Available Incremental Taxes (1 <sup>st</sup> Lien) with backup from the Unconditional, Irrevocable Letter of Credit and the City's general <i>ad valorem</i> property tax levy.
Special Assessment (S.A.) Bonds	Capitalized interest, Available Incremental Taxes (2 <sup>nd</sup> Lien) with backup from the Special Assessment levied on the Phase 1 Project Property
Make-Whole Amount	Available Incremental Taxes (3 <sup>rd</sup> Lien)
City Note	Temporary instrument repaid from Available Incremental Taxes; subordinate to/superseded by, in order of descending priority, G.O. Bonds, S.A. Bonds, and the Make-Whole Amount

The foregoing is intended as a summary only. In the event of any conflict between the foregoing summary set forth in this Section 4.10(i) and any other provision of this Agreement, including but not limited to any other subsection of this Section 4.10, such other provision shall control.

(j) **Bondable Costs.** "Bondable Costs" are the costs of TIF-Funded Improvements and shall be further defined as:

(i) so-called "hard" Redevelopment Project Costs for TIF-Funded Improvements associated with site demolition, preparation, and remediation and construction of infrastructure required for site preparation as described in the Project Budget;

(ii) hard Redevelopment Project Costs for TIF-Funded Improvements associated with the delivery of infrastructure and improvements to be publicly dedicated;

(iii) so-called "soft" Redevelopment Project Costs for TIF-Funded Improvements attributable to the hard Redevelopment Project Costs set forth in Section (4.10)(j)(i-ii) above; and

(iv) partial reimbursement of Developer's planning costs associated with the designation of the Redevelopment Area equal to the lesser of: (A) \$3,000,000 or (B) 100% of the planning costs incurred by Developer and deemed by the City to be both Redevelopment Project Costs under Section 3(q)(1) of the Act and attributable to the Redevelopment Area.

Total Bondable Costs are currently estimated at \$95,885,584.

Planning costs associated with the designation of the Redevelopment Area that are: (1) deemed by the City to be both Redevelopment Project Costs under Section 3(q)(1) of the Act and attributable to the Redevelopment Area; (2) in excess of the \$3,000,000 cap set forth in Section 4.10(j)(iv)(A) above; and (3) satisfactorily evidenced to the City, shall be included in the principal amount of the Note. The maximum amount of such additional planning costs under Section 3(q)(1) of the Act shall be \$2,243,335.

(k) **Reconciliation of Bond Capacity and Bondable Costs.** Prior to Bond Closing, Bondable Costs shall be reconciled with Bond Capacity to develop a final budget illustrating the allowable uses of Bond Proceeds for the Phase 1 Project ("**Bond Proceeds Budget**"). This Bond Proceeds Budget will be equal to the lesser of Bond Capacity or Bondable Costs, shall be incorporated into instructions for the TIF Construction Escrow (as defined in Section 4.10(m)(iii) hereof), and shall set forth limitations on the nature and amounts of Phase 1 Project Costs that may be paid or reimbursed from Bond Proceeds. If Bond Capacity (as estimated consistent with "Sizing and Underwriting Parameters" in Section 4.10(f) hereof) is less than the amount of Bondable Costs, the Bond Proceeds Budget shall incorporate the following items in the following order of priority:

Priority 1: To the extent sufficient Bond Capacity exists, up to 100% of budgeted public infrastructure costs, site preparation Redevelopment Project Costs not yet incurred, and soft Redevelopment Project Costs attributable to these items; then

Priority 2: To the extent sufficient Bond Capacity remains, up to 100% of site preparation hard and soft Redevelopment Project Costs incurred prior to Bond Closing but after designation of the Redevelopment Area; then

Priority 3: To the extent sufficient Bond Capacity remains, other Bondable Costs not included in Priority 1 or Priority 2 above.

To the extent costs in the Bond Proceeds Budget have been prepaid by Developer prior to Bond Closing, these costs may be reimbursed from the initial draw on Bond Proceeds. Any such reimbursement will be subject to the same draw review process as subsequent disbursements of Bond Proceeds.

To the extent that Bond Proceeds remain after completion of all phases of work contemplated in the Bond Proceeds Budget, the City may in its discretion (subject to applicable law and other governing documents) reallocate Bond Proceeds for redemption of the Bonds or for other Redevelopment Project Costs and/or S.A.-Eligible Costs (as defined in Section 4.10(q) hereof). Un-reimbursed Bondable Costs in excess of Bond Capacity will be added to the balance of the Note.

Nothing in this Section 4.10(k) shall be construed as limiting the ability of the parties hereto to establish appropriate escrows and funding procedures to comply with applicable law regarding Redevelopment Project Costs and S.A.-Eligible Costs.

(l) **Other Phase 1 Project Financing.** In addition to the Bond financing described above, Developer will provide (by proof of lender commitments to finance all Developer Phase 1 Scope costs other than those to be funded by the Bond Proceeds or Equity with all material funding contingencies met or waived) sufficient Lender Financing, and (by admission of one or more additional members into Developer or capital commitments made by existing members) Equity financing to complete the Developer Phase 1 Scope at the time of Bond Closing. The minimum amount of Equity demonstrated to be available and committed to the Phase 1 Project at the time of Bond Closing shall be not less than 20% of the Project Budget (Developer Phase 1 Scope as described in Section 4.10(f) hereof) other than costs in the Project Budget that will be funded with Bond Proceeds. This calculation of committed Equity shall exclude any expenditures that will be reimbursed by the City as described in Section 4.05 hereof regarding Prior Expenditures, but shall otherwise include funds expended on pre-development activities (including Phase 1 Project land planning and preparation, if any) directly related (in the City's judgment) to the Phase 1 portion of the Master Plan and the Phase 1 Project, but committed Developer Equity shall not be required to exceed \$75,000,000 subject to the requirements of Section 4.06. The availability and nature of funds available to address costs overruns will be demonstrated by the Equity and Lender Financing commitments described in Sections 4.10(f)(B) and 4.10(m) hereof (or by completion guaranties, or by Developer's right to use demonstrated savings from Phase 1 Project construction costs, to the extent acceptable to lenders).

(m) **Order of Spending Phase 1 Project Funds.**

(i) Developer will commit Equity and/or Lender Financing in amounts sufficient, when combined with Bond Proceeds, to complete the Developer Phase 1 Scope simultaneously with the request to the City for issuance of the Bonds. The City's financial assistance will be in the form of the City Note and Net Bond Proceeds.

(ii) The Bonds will be issued upon the later of (x) Developer's request, and (y) the City's issuance of the Phase 1 Commencement Certificate ("**Phase 1 Commencement Certificate**"), which the City will issue when all of the following conditions have been met (subject to Section 4.10(c)(i)):

- (A) Developer has achieved and evidenced sufficient pre-leasing of the retail space to be built on the Phase 1 Project Property to obtain a commitment for the senior Lender Financing for construction to complete the Developer Phase 1 Scope. The pre-leasing will constitute not less than the greater of 60% of the total gross leasable retail area in the Phase 1 Project or the amount required in the senior Lender Financing commitment;
- (B) The nature of the pre-leased retail is consistent with the character and tenant mix of a high-quality "lifestyle" mixed-use retail/residential development;
- (C) Developer has acquired good, fee simple title to all private land located within the Phase 1 Project Property;
- (D) Developer has provided sufficient soil/geotechnical studies to confirm to the City's satisfaction that the Phase 1 Project Property is suitable for development with the densities, land uses, and layouts contemplated in the Phase 1 Project site plan approved by the City pursuant to the PD to carry out the Developer Phase 1 Scope (the "**Phase 1 Project Site Plan**");
- (E) Developer has satisfied the City's environmental due diligence requirements as set forth in Section 4.10(p) and Section 5.13 hereof;
- (F) Developer has provided an executed, binding sale commitment for a third-party purchaser to purchase one of the rental residential tower sites within the Pad Sale Area; such purchaser has committed to the completion of a vertical development project of the density and scale, and in conformity with the timing, assumed in the TIF Revenue Projections used in Bond sizing ("**Pre-Sale Commitment**"). The Pre-Sale Commitment(s) must account for no less than 33% of the aggregate incremental property taxes projected to be generated by the residential tower portions of the Pad Sale Area. As an alternative to the foregoing requirement, Developer may provide a means of security reasonably satisfactory to the City to ensure payment of an equivalent proportion of Bond debt service.

If, after posting such security, Developer subsequently provides one or more Pre-Sale Commitments, the City shall release an equivalent portion of the security posted by Developer. The amount to be released shall be calculated by comparing (on a present value basis) the value of the security posted by Developer to the Incremental Property Taxes projected to be generated by the third party development associated with the Pre-Sale Commitment(s).

- (G) Developer has provided a senior lender with a commitment for the requisite cash Equity in order to obtain a loan commitment for senior construction Lender Financing to complete the Developer Phase 1 Scope, and has provided the City with a copy of this written loan commitment;
- (H) Developer has provided the City sufficient evidence and documentation that a commitment for senior Lender Financing for the Phase 1 Project has been obtained, and is prepared to open a senior Lender Financing construction escrow (the "**Senior Lender Financing Construction Escrow**") in connection therewith.
- (I) The total amount of committed Lender Financing and Equity is, when combined with the anticipated Net Bond Proceeds, demonstrated to be sufficient to complete the Developer Phase 1 Scope;
- (J) Developer has satisfied the City's environmental requirements with respect to design for items such as LEED certification and the provision of green roofs, as provided in the PD;
- (K) Developer has submitted adequate documentation of Developer Phase 1 Scope Costs ("**Phase 1 Scope Costs**") to DCD, under the terms of Section 4.10(r) hereof;
- (L) Developer has submitted and received City approval of MBE/WBE budgets pursuant to Section 10.03 hereof; and
- (M) The Phase 1 Project Property, or applicable portion thereof, has been designated as a special assessment area and the Special Assessment has been established thereon.

(iii) Upon satisfaction of all of the foregoing conditions, Developer will open the Senior Lender Financing Construction Escrow (as defined in Section 4.10(m)(ii)(H) hereof), the City thereupon will issue the Bonds and the Net Bond Proceeds will be placed in one or more escrow accounts (the "**TIF Construction Escrow**"). Funds will be drawn out of the Senior Lender Financing

Construction Escrow and the TIF Construction Escrow to fund the Project, as follows:

- (A) For all horizontal construction (site preparation, general infrastructure, roads, utilities, Bondable Costs, etc.), which will commence first, construction funds may first be drawn out of the TIF Construction Escrow.
- (B) For all vertical construction (privately-owned buildings and other improvements which are not TIF-Funded Improvements), construction funds will be drawn out of the Senior Lender Financing Construction Escrow in the order specified in the Lender Financing documents and in accordance with loan covenants.
- (C) Detailed requirements for the structuring of escrows and disbursement of funds will be delineated in the respective Senior Lender Financing Construction Escrow and TIF Construction Escrow.

(n) **City Funds at Closing.** City Funds up to the amount of the costs incurred for TIF-Funded Improvements will be paid on the later of: (i) the Closing Date of the Agreement and (ii) the Bond Closing.

(o) **TIF Construction Escrow for Bond Proceeds.** The City will establish project funds under bond indentures to be held in the TIF Construction Escrow, to contain the Net Bond Proceeds and to facilitate the reimbursement to Developer of the costs of the TIF-Funded Improvements. Developer will make construction draws against the TIF Construction Escrow as it incurs the costs of TIF-Funded Improvements, following submission of City-approved requests for payment, on a monthly basis following Bond Closing. The bond indentures governing the TIF Construction Escrow will contain such mechanisms as are necessary to ensure that draws against S.A. Bond Proceeds are only for S.A.-Eligible Costs (as defined in Section 4.10(q) hereof).

(p) **Environmental Audits.** As of the date hereof, Developer has provided the City with all environmental reports in its possession or control with respect to the Phase 1 Project Property. Developer must provide the City with copies of any additional sampling plans and data, reports, assessments, studies, audits and other documents in its possession or control relating to the environmental condition of the Phase 1 Project Property completed after the date hereof, including Phase I and II environmental assessment reports and the reports submitted to the Illinois Environmental Protection Agency ("IEPA") for the Site Remediation Program ("SRP"), if any (collectively, "New Environmental Reports"). Developer will provide the City with reliance letter(s) ("Reliance Letters") from the environmental consultants preparing any such New Environmental Reports.

(q) **S.A.-Eligible Costs.** Subject to City Special Assessment Counsel approval, the cost of all local public improvements (including all site preparation related thereto),

as prescribed by Illinois special assessment law (including but not limited to the Special Assessment Law and the Special Assessment Supplemental Bond and Procedures Act), will be eligible for reimbursement from S.A. Bond Proceeds and will be listed specifically as "S.A.-Eligible Costs" in the Amended and Restated Agreement.

(r) **Bond Closing Requirements.** Prior to issuance of the Bonds and the release of City Funds for the Phase 1 Project ("**Bond Closing**"), Developer shall provide the following to the City:

(i) Evidence of good, fee simple title to all private land located within the Phase 1 Project Property (which may be satisfied by providing a current title insurance commitment covering the Phase 1 Project Property and showing Developer as the insured party) subject to liens in favor of the City and the provider of Lender Financing;

(ii) Proof that the Phase 1 Project Property has been contributed to Developer with the sole consideration for the contribution of the Phase 1 Project Property being a share in future Phase 1 Project profits/net cash flow (that is, no consideration for this real property contribution is to be funded from City Funds);

(iii) The operating agreement for Developer as of Bond Closing;

(iv) Proof of commitment of Lender Financing and Developer Equity sufficient to complete Developer Phase 1 Scope (see additional applicable parameters set forth in Section 4.10(l) hereof);

(v) Developer's financial statements for the most recent three fiscal years;

(vi) Description of the composition of Affordable Units included in the entire Phase 1 Project, as reviewed and approved by DCD;

(vii) A copy of an owner's title insurance policy, UCC, tax and judgment searches, as specified in Sections 5.05 and 5.06;

(viii) Opinion of counsel, as specified in Section 5.09;

(ix) Evidence of insurance (acceptable to the City);

(x) Certified copies of ground leases and operating leases; and

(xi) Other customary closing requirements in transactions of this type.

Further, Developer shall have obtained a Phase 1 Commencement Certificate as described in Section 4.10(m)(ii) hereof prior to Bond Closing.

4.11 **Voluntary Termination.** If Bond Closing has not occurred within twelve (12) years of Route 41 Completion, then either the City or Developer may terminate this

Agreement by written notice to the other party, and upon delivery of such notice this Agreement shall be null and void and of no further force or effect.

#### **ARTICLE FIVE: CONDITIONS PRECEDENT TO AGREEMENT CLOSING AND BOND CLOSING**

The following conditions precedent to closing must be complied with to the City's satisfaction within the time periods set forth below or, if no time period is specified, prior to the Closing Date or the Bond Closing (as indicated):

5.01 **Project Budget.** Developer will have submitted to DCD, and DCD will have approved, the Project Budget stated in Exhibit D-1, in accordance with the provisions of Section 3.03 as of the Closing Date.

5.02 **Scope Drawings and Plans and Specifications.** Developer will have submitted to DCD, and DCD will have approved, the Scope Drawings and Plans and Specifications in accordance with the provisions of Section 3.02 or DCD will have agreed to approve them as a post-closing item, promptly upon receipt, as of the Bond Closing.

5.03 **Other Governmental Approvals.** Not less than 5 Business Days prior to the Bond Closing, Developer will have secured or applied for or provided DCD with an application time schedule for all other necessary approvals and permits required by any Federal, State, or local statute, ordinance, rule or regulation to begin or continue construction of the Project, and will submit evidence thereof to DCD or DCD will have agreed to accept such evidence as a post-closing item.

5.04 **Financing.**

(a) Prior to Bond Closing, Developer will have furnished evidence acceptable to the City that Developer has Equity and Lender Financing commitments, if any, at least in the amounts stated in Section 4.01 (or such other amounts as may be necessary for the construction of the Developer Phase 1 Scope as set forth in an Amended and Restated Agreement) to complete the Project and satisfy its obligations under this Agreement. If a portion of such financing consists of Lender Financing, Developer will have furnished evidence as of the Bond Closing that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with the Equity and other financing sources, if any, stated in Section 4.01) to complete the Project.

(b) Prior to the Bond Closing, Developer will deliver to DCD a copy of the construction escrow agreement, if any, entered into by Developer regarding Developer's Lender Financing, if any. Such construction escrow agreement must provide that the City will receive copies of all construction draw request materials submitted by Developer after the Bond Closing.

(c) Any financing liens against the Phase 1 Project Property or the Project in existence at the Bond Closing will be subordinated to certain encumbrances of the City stated in this Agreement under a subordination agreement, in the form of Exhibit O, executed on or prior to the Bond Closing, which is to be recorded, at the expense of Developer, in the Office of the Recorder of Deeds of Cook County.



5.05 **Acquisition and Title.**

(a) Developer has provided the City with a copy of a title insurance commitment and/or title insurance policy, and a copy of Developer's operating agreement and other entity documentation, that together demonstrate that Developer is the owner of the Phase 1 Project Property.

(b) At the Bond Closing, Developer will furnish the City with a copy of the Title Policy for the Phase 1 Project Property, showing Developer as the named insured. The Title Policy will be dated as of the date of the Bond Closing and will contain only those title exceptions listed as Permitted Liens on Exhibit I and will evidence the recording of this Agreement under the provisions of Section 8.15. The Title Policy will also contain the following endorsements as required by Corporation Counsel in this transaction, including but not limited to: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking, if available), contiguity, location, access, and survey. Developer will provide to DCD, on or prior to the Bond Closing, documentation related to the acquisition of the Phase 1 Project Property and certified copies of all easements and encumbrances of record with respect to the Phase 1 Project Property not addressed, to DCD's satisfaction, by the title policy and any endorsements thereto.

5.06 **Evidence of Clear Title.** Not later than 5 Business Days prior to the Closing Date, Developer, at its own expense, will have provided the City with current searches under Developer's name as follows:

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

showing no liens against Developer, the Phase 1 Project Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.

5.07 **Surveys.** Developer has provided the City with a boundary survey of the Phase 1 Project Property. Not later than 5 Business Days prior to the Bond Closing, Developer will have furnished the City with 3 copies of the Survey.

5.08 **Insurance.** As of the Closing Date, Developer, at its own expense, will have insured the Phase 1 Project Property and the Project as required under Article Twelve. At least 5 Business Days prior to the Closing Date, certificates required under Article Twelve evidencing the required coverages will have been delivered to DCD.

5.09 **Opinion of Developer's Counsel.** On the Closing Date and at Bond Closing, Developer will furnish the City with an opinion of counsel, substantially in the form of Exhibit J, with such changes as may be required by or acceptable to Corporation Counsel. If Developer has engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions stated in Exhibit J, such opinions shall be obtained by Developer from its general corporate counsel.

5.10 **Evidence of Prior Expenditures.** Not less than 20 Business Days prior to the Closing Date, Developer will have provided evidence satisfactory to DCD of the Prior Expenditures as provided in Section 4.05, which shall provide a basis for determining the principal amount of the Note at its issuance. Such evidence of Prior Expenditures may be updated to the Closing Date by Developer. Developer also shall provide evidence satisfactory to DCD of Prior Expenditures as of Bond Closing, which shall provide a basis for determining both: (a) the amount of Net Bond Proceeds to be paid to Developer at the Bond Closing, and (b) the principal amount of the Note as of Bond Closing.

5.11 **Financial Statements.** Not less than 30 days prior to the Bond Closing, Developer will have provided Financial Statements to DCD for its most recent fiscal years, if available, and its most recently publicly available unaudited interim Financial Statements, in each case together with any audit letters.

5.12 **Additional Documentation.** As of the Bond Closing, Developer will have provided documentation to DCD, satisfactory in form and substance to DCD, with respect to current employment profile, if requested by DCD, and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds on the Phase 1 Project Property, if any.

5.13 **Environmental Reports.** Not less than 30 days prior to the Closing Date, Developer will provide DCD with copies of all New Environmental Reports and Reliance Letters.

5.14 **Entity Documents; Economic Disclosure Statements.** Prior to the Closing Date and again prior to the Bond Closing, Developer will provide a copy of its current Articles of Formation, with all amendments, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and from all other states where Developer is qualified to do business; current operating agreement, with all amendments; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such other entity documentation as the City may request. Developer will provide to the City an Economic Disclosure Statement(s), in the City's then current form (or recertification of same), dated as of the Closing Date.

5.15 **Litigation.** Developer will provide to Corporation Counsel and DCD, at least 10 Business Days prior to the Closing Date and again prior to the Bond Closing, a description of all pending or threatened litigation or administrative proceedings involving 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.

**ARTICLE SIX: AGREEMENTS WITH CONTRACTORS****6.01 Bid Requirement for General Contractor and Subcontractors.**

(a) DCD acknowledges that Developer will select a General Contractor for the Project prior to Bond Closing. Prior to entering into an agreement with any subcontractor for construction of the TIF-Funded Improvements, (or any phase thereof) after the Closing Date, Developer must solicit, or must cause the General Contractor to solicit, bids from qualified contractors eligible to do business with the City of Chicago. For the TIF-Funded Improvements, Developer must cause the General Contractor to select the subcontractor submitting the lowest responsive and responsible bid who can complete the Project (or phase thereof) in a timely and good and workmanlike manner; provided, however, that Developer may consider a bidder's ability to meet the unique challenges of the Project in evaluating the "lowest responsible bid" rather than the lowest bid. If the General Contractor selects any subcontractor submitting other than the lowest responsive and responsible bid for the TIF-Funded Improvements, the difference between the lowest responsive and responsible bid and the bid selected may not be paid out of City Funds.

(b) The Developer must submit copies of the Construction Contract to DCD as required under Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements must be provided to DCD within 20 Business Days of the execution thereof. Developer must ensure that the General Contractor will not (and must cause the General Contractor to ensure that the subcontractors will not) begin work on the Project (or any phase thereof) until the applicable Plans and Specifications for that phase have been approved by DCD and all requisite permits have been obtained.

6.02 **Construction Contract.** Prior to the execution thereof, Developer must deliver to DCD a copy of the proposed Construction Contract with the General Contractor selected to work on the TIF-Funded Improvements under Section 6.01 above, for DCD's prior written approval. Within 10 Business Days after execution of such contract by Developer, the General Contractor and any other parties thereto, Developer must deliver to DCD 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 commencement of construction of any work in the public way, if any, Developer will require that the General Contractor and any applicable subcontractor(s) be bonded (as to such work in the public way) for their respective payment and performance by sureties having an AA rating or better using the payment and performance bond form attached as Exhibit L. The City will be named as obligee or co-obligee on such bond.

6.04 **Employment Opportunity.** Developer will contractually obligate and cause the General Contractor to agree and contractually obligate each subcontractor to agree to the provisions of Article Ten.

6.05 **Other Provisions.** In addition to the requirements of this Article Six, the Construction Contract and each contract with any subcontractor must contain provisions required

under Section 3.04 (Change Orders), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement), Section 10.03 (Developer's MBE/WBE Commitment), Article Twelve (Insurance) and Section 14.01 (Books and Records).

#### ARTICLE SEVEN: COMPLETION OF CONSTRUCTION

7.01 **Certificate of Completion of Construction**. Upon completion of the construction of portions of the Phase 1 Project in compliance with the terms and conditions of this Agreement, and upon Developer's written request, and after review with other affected City departments, DCD will issue to Developer certificates of completion of construction in recordable form (individually the "COC", and collectively the "COCs") certifying that Developer has fulfilled its obligation to complete the applicable portion of the Phase 1 Project in compliance with the terms and conditions of this Agreement, as follows:

(a) **Certificate of Vertical Development Area Completion**. The City will issue a Certificate of Vertical Development Area Completion (the "**Vertical Area Certificate**"), upon Developer's written request for such COC, when the following conditions have been met:

(i) 100% of the leasable square footage of retail/commercial area in the Vertical Development Area that was included in the TIF Revenue Projections has been substantially completed (subject only to completion of tenant improvement work) and a minimum of 75% of said square footage has been leased and occupied;

(ii) 100% of the residential dwelling units designated as Affordable Units within the Vertical Development Area that were included in the TIF Revenue Projections have been substantially completed and a minimum of 80% of said units have been leased, or sold, and occupied;

(iii) 100% of the residential dwelling units designated as "market rate" within the Vertical Development Area that were included in the TIF Revenue Projections have been substantially completed and 50% of said units have been leased, or sold, and occupied;

(iv) Buildings and improvements within the Vertical Development Area as set forth in the Phase 1 Developer Scope have been constructed in material compliance with the applicable provisions of the PD.

(v) The City's monitoring staff has determined in writing that Developer is in compliance with all City Requirements, as defined in Section 3.07 hereof, as they pertain to the Vertical Development Area;

(vi) Developer has satisfied the City's environmental requirements with respect to design for items such as LEED certification and the provision of green roofs for the Vertical Development Area, as provided in the PD;

(vii) As required by Section 11.01, Developer has provided the City with sufficient evidence that the 1997 No Further Remediation ("NFR") letter remains valid and enforceable for the Vertical Development Area;

(viii) Developer has designated at least 20% of the residential dwelling units included in the Vertical Development Area as housing to be Affordable Units for households earning up to 60% of area median income ("AMI") for rental dwelling units and households earning up to 100% of AMI for owner-occupied dwelling units; and

(ix) the designated public improvements to be constructed by Developer within the Vertical Development Area, as indicated in the PD, have been substantially completed and dedicated to the City or other appropriate public entity (provided that this dedication condition shall have been met if Developer has: (1) completed the full scope of said public improvements to the applicable standards of the public entity or entities to which they are to be dedicated, as evidenced by inspection reports produced by such public entity or entities, and (2) has attempted to make, but the City or other appropriate public entity has failed to accept, such dedication).

(b) **Certificate of Pad Sale Area Completion**. The City will issue a Certificate of Pad Sale Area Completion ("Pad Area Certificate") upon Developer's written request for such COC, when the following conditions have been met:

(i) Developer has sold, or otherwise conveyed, all saleable components of the Pad Sale Area to third party, or related, entities for development;

(ii) the executed documents for these conveyances have been provided to DCD, and DCD has verified that the conveyance documents reflect the requirements of Section 4.10(m)(ii)(F);

(iii) Buildings and improvements within the Pad Sale Area have been constructed in accordance with the applicable PD provisions;

(iv) the buildings included in the TIF Revenue Projections are at least 60% leased (in the case of rental residential dwelling units and commercial facilities) or at least 60% sold (in the case of owner-occupied residential dwelling units);

(v) 100% of the residential dwelling units designated as Affordable Units within the Pad Sale Area that were included in the TIF Revenue Projections have been substantially completed and 80% of said units have been leased, or sold, and occupied;

(vi) As required by Section 11.01, Developer has provided the City with sufficient evidence that the 1997 NFR letter remains valid and enforceable for the Pad Sale Area;

(vii) the City's monitoring staff has determined in writing that Developer is in compliance with all City Requirements, as defined in Section 3.07, as they pertain to the Pad Sale Area; and

(viii) Developer has satisfied City's environmental requirements with respect to items such as LEED certification and the provision of green roofs for the Pad Sale Area, as provided in the PD.

(c) DCD will respond to Developer's written request for a COC within 45 days by issuing either a COC or a written statement detailing the ways in which the Phase 1 Project does not conform to this Agreement or has not been satisfactorily completed and the measures which must be taken by Developer in order to obtain the COC. Developer may resubmit a written request for a COC upon completion of such measures, and the City will respond within 45 days in the same way as the procedure for the initial request. Such process may repeat until the City issues a COC. The City's issuance of both the Vertical Area Certificate and the Pad Sale Certificate shall constitute the City's certification that Developer has fulfilled its obligation to complete the Phase 1 Project in compliance with the terms and conditions of this Agreement.

**7.02 Effect of Issuance of COC; Continuing Obligations.**

(a) The COC relates only to the construction of the Phase 1 Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to Developer's obligation to complete such activities have been satisfied. After the issuance of a COC, 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 COC must not be construed as a waiver by the City or Developer of any of their respective rights and remedies under such executory terms.

(b) Those covenants specifically described at Section 8.02 (Covenant to Redevelop), Section 8.16 (Real Estate Provisions), and Section 8.18 (Land Use Covenants) as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Phase 1 Project Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a COC (except with respect to Section 8.02). The other executory terms of this Agreement that remain after the issuance of a COC will be binding only upon Developer or a permitted assignee of Developer who, as provided in Section 18.15 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

**7.03 Failure to Complete.** If Developer fails to timely complete the Project in compliance with the terms of this Agreement, then the City will have, but will not be limited to, any of the following rights and remedies:

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

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. If the aggregate cost of completing the TIF-Funded Improvements that are public improvements exceeds the amount of City Funds available under Section 4.03, Developer will 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 Developer that have not already been expended for TIF-Funded Improvements, provided that the City is entitled to rely on an opinion of counsel that such reimbursement will not jeopardize the tax-exempt status of the Bonds.

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

#### **ARTICLE EIGHT: REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.**

8.01 **General.** 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) Developer is a Delaware limited liability company duly organized, validly existing and 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) Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

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

(d) Developer has acquired and will maintain good, indefeasible and merchantable fee simple title to the Phase 1 Project Property (and improvements and appurtenances) free and clear of all liens except for: (i) the Permitted Liens scheduled in the Title Report and incorporated in Exhibit I; (ii) Lender Financing, if any, as disclosed in the Project Budget; (iii) liens in favor of the City, and (iv) non-governmental charges that Developer is contesting in good faith as provided in Section 8.12.

(e) Developer is now, and for the Term of the Agreement, will remain solvent and able to pay its debts as they mature;

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

(g) Developer has and will maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to construct and complete and operate the Phase 1 Project and to conduct its business on the Phase 1 Project Property;

(h) 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 Developer is a party or by which Developer or any of its assets is bound which would materially adversely effect its ability to comply with its obligations under this Agreement;

(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 Developer; and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of Developer since the date of Developer's most recent Financial Statements;

(j) prior to the issuance of a COC, if it would materially adversely affect Developer's ability to perform its obligations under this Agreement, Developer will not do any of the following without the prior written consent of DCD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose (directly or indirectly) of all or substantially all of its assets or any portion of the Phase 1 Project Property or the Phase 1 Project (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business as contemplated in Developer's operating agreement, other than (i) sale, lease or other transfer of the Pad Sale Area, (ii) leases of sites or buildings within the Vertical Development Area to tenants or other end users, (iii) dedications to the public or to private utility providers, (iv) sales of owner-occupied residential dwelling units to unit buyers, and (v) transfers of portions of the Phase 1 Project Property to Affiliates of Developer, provided that Developer shall notify the City of any such sale, lease or transfer to Developer Affiliates; (3) enter into any transaction outside the ordinary course of Developer's business that would materially adversely affect the ability of Developer to complete the Phase 1 Project; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity that would materially adversely affect the ability of Developer to complete the Phase 1 Project; or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition or its ability to complete the Phase 1 Project or to continue operations at the Phase 1 Project Property;

(k) Developer has not incurred and, prior to the issuance of a COC, will not, without the prior written consent of the Commissioner of DCD, allow the existence of any liens against the Phase 1 Project Property and Phase 1 Project other than the Permitted Liens; or incur any indebtedness secured or to be secured by the Phase 1 Project Property and Phase 1 Project or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget;



(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 under City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with Developer in violation of Chapter 2-156-120 of the Municipal Code of the City, as amended, and

(m) neither Developer nor any Affiliate thereof 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 Lists, the Unverified List, the Entity List and the Debarred List.

**8.02 Covenant to Redevelop.** Upon (a) DCD's approval of the Scope Drawings and Plans and Specifications, and the Project Budget as provided in Sections 3.02 and 3.03, and Developer's receipt of all required building permits and governmental approvals, (b) Developer's obtaining of Equity and Lender Financing, upon terms acceptable to Developer and the City, required for the Developer Phase 1 Scope, and (c) Bond Closing and deposit of Net Bond Proceeds into the TIF Construction Escrow, Developer will redevelop the Phase 1 Project Property in compliance with this Agreement and all exhibits attached hereto, the TIF Ordinances, the City ordinances authorizing the issuance of the Bonds, the Scope Drawings, the Plans and Specifications, the Project Budget and all amendments thereto, and all Federal, State and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Phase 1 Project Property, the Phase 1 Project and/or Developer. The covenants set forth in this Section 8.02 will run with the land and will be binding upon any transferee, until fulfilled as evidenced by the issuance of a COC.

**8.03 Redevelopment Plan.** Developer represents that the Phase 1 Project is and will be in compliance with all applicable terms of the Redevelopment Plan.

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

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

actionable under applicable securities laws unless such disclosures are based on factual information provided by Developer that is determined to be false and misleading.

**8.06 Employment Opportunity.**

(a) Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and, as applicable, to cause the General Contractor to contractually obligate each subcontractor to abide by the terms set forth in Section 8.08 (Prevailing Wage) and Article Ten (Developer's Employment Obligations). Developer will submit to DCD a plan describing its compliance program prior to the Bond Closing.

(b) Developer will deliver to the City written progress reports by draw, but not less than quarterly following Bond Closing, detailing compliance with the requirements of Sections 8.08, (Prevailing Wage) 10.02 (City Resident Construction Worker Employment Requirement) and 10.03 (Developer's MBE/WBE Commitment) of this Agreement. If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to DCD which will outline, to DCD's satisfaction, the manner in which Developer will correct any shortfall.

**8.07 Employment Profile.** Developer will submit, and contractually obligate and cause the General Contractor to submit and contractually obligate any subcontractor to submit, to DCD, from time to time, statements of its employment profile upon DCD's request.

**8.08 Prevailing Wage.** Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the State Department of Labor (the "**Labor Department**"), to all of their respective employees working on constructing the Phase 1 Project or otherwise completing the TIF-Funded Improvements. All such contracts will list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed under such contract, or alternatively Developer will provide applicable schedules evidencing wage rates paid. If the Labor Department revises such prevailing wage rates, the revised rates will apply to all such contracts. Upon the City's request, Developer will provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.08.

**8.09 Arms-Length Transactions.** Except as set forth on Exhibit E and Exhibit H, unless DCD shall have given its prior written consent with respect thereto, no Affiliate of 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, except for the General Contractor. Developer will provide information with respect to any entity (other than the General Contractor) to receive City Funds directly or indirectly (whether through payment to an Affiliate by Developer and reimbursement to Developer for such costs using City Funds, or otherwise), upon DCD's request, prior to any such disbursement.

**8.10 Financial Statements.** Developer will obtain and provide to DCD Financial Statements for 2010, and each year thereafter for the Term of the Agreement. In addition,

Developer shall provide to DCD unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DCD may request.

8.11 **Insurance.** Solely at its own expense, Developer will comply with all applicable provisions of Article Twelve (Insurance) hereof.

8.12 **Non-Governmental Charges.**

(a) **Payment of Non-Governmental Charges.** Except for the Permitted Liens, and subject to subsection (b) below, Developer agrees to pay or cause to be paid when due any Non-Governmental Charges assessed or imposed upon the Phase 1 Project Property or any fixtures that are or may become attached thereto and which are owned by Developer, which creates, may create, or appears to create a lien upon all or any portion of the Phase 1 Project Property; provided however, that if such Non-Governmental Charges may be paid in installments, 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. Developer will furnish to DCD, within thirty (30) days of DCD's request, official receipts from the appropriate entity, or other evidence satisfactory to DCD, evidencing payment of the Non-Governmental Charges in question.

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charges by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charges, prevent the imposition of a lien or remove such lien, or prevent the transfer or forfeiture of the Phase 1 Project Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charges at the time and in the manner provided in this Section 8.12); or

(ii) at DCD's sole option, to furnish a good and sufficient bond or other security satisfactory to DCD in such form and amounts as DCD will require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such transfer or forfeiture of the Phase 1 Project 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 Charges and all interest and penalties upon the adverse determination of such contest.

8.13 **Developer's Liabilities.** Developer will not enter into any transaction that would materially and adversely affect its ability to: (i) perform its obligations under this Agreement or (ii) repay any material liabilities or perform any material obligations of Developer to any other person or entity. Developer will immediately notify DCD of any and all events or actions which may materially affect Developer's ability to carry on its business operations or perform its

obligations under this Agreement or under any other documents and agreements related to this Agreement or the Phase 1 Project.

8.14 **Compliance with Laws.**

(a) **Representation.** To Developer's knowledge, after diligent inquiry, the Phase 1 Project Property and the Phase 1 Project are in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Phase 1 Project Property and the Phase 1 Project. Upon the City's request, Developer will provide evidence reasonably satisfactory to the City of such current compliance.

(b) **Covenant.** Developer covenants that the Phase 1 Project Property and the Phase 1 Project will be operated and managed in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Phase 1 Project Property or the Phase 1 Project, including the following Municipal Code 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, whether or not in performance of this Agreement. Upon the City's request, Developer will provide evidence to the City of its compliance with this covenant.

8.15 **Recording and Filing.** Developer will cause this Agreement, certain exhibits (as specified by Corporation Counsel) and all amendments and supplements hereto to be recorded and filed on the date hereof in the conveyance and real property records of Cook County, Illinois against the Phase 1 Project Property. Developer will pay all fees and charges incurred in connection with any such recording. Upon recording, Developer will immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

8.16 **Real Estate Provisions.**

(a) **Governmental Charges.**

(i) **Payment of Governmental Charges.** Subject to subsection (ii) below, Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer, the Phase 1 Project Property or the Phase 1 Project, or become due and payable, and which create, or may create a lien upon Developer or all or any portion of the Phase 1 Project Property or the Phase 1 Project. "**Governmental Charge**" means all Federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to Developer, the Phase 1 Project Property or the Phase 1 Project, including but not limited to real estate taxes.

(ii) **Right to Contest.** Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the

contested Governmental Charge and prevent the imposition of a lien or the sale or transfer or forfeiture of the Phase 1 Project Property. Developer's right to challenge real estate taxes applicable to the Phase 1 Project Property is limited as provided for in Section 8.16(c) below; provided, that such real estate taxes must be paid in full when due. No such contest or objection will be deemed or construed in any way as relieving, modifying or extending Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless Developer has given prior written notice to DCD of Developer's intent to contest or object to a Governmental Charge and, unless, at DCD's sole option:

(iii) Developer will demonstrate to DCD's satisfaction that legal proceedings instituted by Developer contesting or objecting to a Governmental Charge will conclusively operate to prevent or remove a lien against, or the sale or transfer or forfeiture of, all or any part of the Phase 1 Project Property to satisfy such Governmental Charge prior to final determination of such proceedings, and/or;

(b) Developer will furnish a good and sufficient bond or other security satisfactory to DCD in such form and amounts as DCD may require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or transfer or forfeiture of the Phase 1 Project 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.

(c) **Developer's Failure To Pay Or Discharge Lien.** If Developer fails to pay or contest any Governmental Charge or to obtain discharge of the same, Developer will advise DCD thereof in writing, at which time DCD may, but will not be obligated to, and without waiving or releasing any obligation or liability of Developer under this Agreement, in DCD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DCD deems advisable. All sums so paid by DCD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, will be promptly disbursed to DCD by Developer. Notwithstanding anything contained herein to the contrary, this paragraph must not be construed to obligate the City to pay any such Governmental Charge. Additionally, if Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require Developer to submit to the City audited Financial Statements at Developer's own expense.

(d) **Real Estate Taxes.**

(i) **Acknowledgment of Real Estate Taxes.** Developer agrees that: for the purposes of this Agreement, the total projected minimum assessed value of the Phase 1 Project Property (and related improvements) ("**Minimum Assessed Value**") is shown on Exhibit K for the years noted on Exhibit K.

(ii) **Real Estate Tax Exemption.** With respect to the Phase 1 Project Property (and related improvements) or the Phase 1 Project, until the Bonds are

issued on a tax-exempt basis neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will seek or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect.

(iii) No Reduction in Real Estate Taxes.

- (A) Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will, until the Bonds are issued on a tax-exempt basis, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Phase 1 Project Property or the Phase 1 Project below the amount of the Minimum Assessed Value as shown in Exhibit K for the applicable year.

(iv) No Objections. Until the Bonds are issued on a tax-exempt basis, neither Developer nor any agent, representative, the lessee, tenant, assignee, transferee or successor in interest to Developer, will object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Under Assessment Complaint (as defined below) or subsequent proceedings related thereto with the Cook County Assessor or with the Cook County Board of Appeals, by either the City or any taxpayer. The term "Under Assessment Complaint" as used in this Agreement means any complaint seeking to increase the assessed value of the Phase 1 Project Property (and related improvements) or the Phase 1 Project up to (but not above) the Minimum Assessed Value as shown in Exhibit K.

(v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.16(d) are covenants running with the land. This Agreement will be recorded by Developer as a memorandum thereof, at Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions will be binding upon Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants will be released when the Redevelopment Area is no longer in effect, or upon termination of this Agreement. Developer agrees that any sale, transfer, lease, conveyance, or transfer of title to all or any portion of the Phase 1 Project Property or the Phase 1 Project from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.16(d) to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of Developer, its successors or assigns, may waive and terminate Developer's covenants and agreements set forth in this Section 8.16(d).

8.17 **Job Recruitment, Training and Hiring Plan.** Developer agrees to work with the Workforce Solutions Unit of DCD to create and implement a mutually acceptable plan for the recruitment, training and hiring of City of Chicago residents. Such plan will have as one of its goals, an objective to maximize the number of local residents from the South Shore and South Chicago and adjacent communities participating in the plan. Developer will develop job criteria and qualifications for plan use and will consult with the Workforce Solutions Unit as necessary in this process. The Workforce Solutions Unit will refer candidates to Developer whom it finds are qualified to perform work consistent with the operations timing objectives contained in the plan, and Developer will interview such qualified candidates. Developer will not be required to hire any specified number of such candidates.

8.18 **Land Use Covenants.**

(a) **Land Use Compliance.** Developer covenants that its use of the Phase 1 Project Property and the Phase 1 Project will be in compliance with the Redevelopment Plan, and applicable zoning laws.

(b) **Run With The Land.** The covenants stated in this Section 8.18 run with the land and are intended to be binding on any transferee of the Phase 1 Project Property or the Phase 1 Project.

8.19 **Annual Compliance Report.** Beginning with the issuance of the COC and continuing throughout the Term of the Agreement, Developer shall submit to DCD the Annual Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

8.20 **Reserved.**

8.21 **Broker's Fees.** Developer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to any of the transactions contemplated by this Agreement for which the City could become liable or obligated. The City has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to any of the transactions contemplated by this Agreement for which Developer could become liable or obligated.

8.22 **No Conflict of Interest.** Under Section 5/11-74.4-4(n) of the Act, Developer represents, warrants and covenants that to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Phase 1 Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City (a "City Group Member") owns or controls, has owned or controlled or will own or control any interest, and no such City Group Member will represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in Developer, the Phase 1 Project Property, the Phase 1 Project, or to Developer's actual knowledge, any other property in the Redevelopment Area.

8.23 **Disclosure of Interest.** Developer's counsel has no direct or indirect financial ownership interest in Developer, the Phase 1 Project Property or any other feature of the Project.

8.24 **No Business Relationship with City Elected Officials.** Developer acknowledges receipt of a copy of Section 2-156-030(b) of the Municipal Code and that Developer has read and understands such provision. Under Section 2-156-030(b) of the Municipal Code of Chicago, 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 official has a "Business Relationship" (as defined in Section 2-156-080(b)(2) of the Municipal Code), or to participate in any discussion of 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. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Agreement, or in connection with the transactions contemplated thereby, will be grounds for termination of this Agreement and the transactions contemplated thereby. 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 thereby.

8.25 **Prohibition on Certain Contributions By Mayoral Executive Order No. 05-1.** Developer agrees that Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5 percent ("**Owners**"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with Developer regarding the subject matter of this Agreement) ("**Contractors**"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("**Sub-owners**") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together, the "**Identified Parties**"), will not make a contribution of any amount to the Mayor of the City of Chicago (the "**Mayor**") or to his political fundraising committee: (i) after execution of this Agreement by Developer, (ii) while this Agreement or any Other Contract is executory, (iii) during the Term of this Agreement or any Other Contract between Developer and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Developer represents and warrants that from the later of: (i) February 10, 2005, or (ii) the date the City approached the Developer or the date the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Developer agrees that it will not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.



Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Developer intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

**"Bundle"** means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

**"Other Contract"** means any other agreement with the City of Chicago to which Developer is a party that is: (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

**"Contribution"** means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are **"Domestic Partners"** if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
  1. The partners have been residing together for at least 12 months.
  2. The partners have common or joint ownership of a residence.
  3. The partners have at least two of the following arrangements:
    - a. joint ownership of a motor vehicle;
    - b. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "Political fundraising committee" as defined in Chapter 2-156 of the Municipal Code, as amended.

8.26 **Information To Be Kept Current.** Developer shall comply with Section 2-154-020 of the Municipal Code, as amended. Developer has read and understands Chapter 2-55 of the Municipal Code and shall comply with said Chapter.

8.27 **Failure to Maintain Eligibility To Do Business With The City.** Failure by Developer or any controlling person (as defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code shall be grounds for termination of the Agreement and the transactions contemplated thereby.

8.28 **Survival of Covenants.** All warranties, representations, covenants and agreements of Developer contained in this Article Eight and elsewhere in this Agreement are true, accurate and complete at the time of Developer's execution of this Agreement, and will survive the execution, delivery and acceptance by the parties and (except as provided in Article Seven upon the issuance of a COC) will be in effect throughout the Term of the Agreement.

#### ARTICLE NINE: REPRESENTATIONS, WARRANTIES AND COVENANTS 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 Article Nine 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.

#### ARTICLE TEN: DEVELOPER'S EMPLOYMENT OBLIGATIONS

10.01 **Employment Opportunity.** Developer, on behalf of itself and its successors and assigns, hereby agrees, and will contractually obligate its or their various contractors, subcontractors or any Affiliate of Developer on the Phase 1 Project (collectively, with Developer, such parties are defined herein as the "**Employers**", and individually defined herein as 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 Phase 1 Project:

(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 qualified 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 Phase 1 Project be awarded to qualified 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 will comply with all applicable 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 State Human Rights Act, 775 ILCS 5/1-101 et. seq. (2006 State Bar Edition), as amended, and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, will 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 will include the foregoing provisions of subparagraphs (a) through (d) in every construction contract entered into in connection with the Phase 1 Project, after the Closing Date, and will require inclusion of these provisions in every subcontract entered into by any subcontractors, after the Closing Date, and every agreement with any Affiliate operating on the Phase 1 Project Property or at the Phase 1 Project, after the Closing Date, so that each such provision will 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 will be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof, subject to the cure rights under Section 15.03.

**10.02 City Resident Construction Worker Employment Requirement.**

(a) Developer agrees for itself and its successors and assigns, and will contractually obligate its General Contractor and will cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Phase 1 Project they will 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 employed by the General Contractor and subcontractors on the site of the Phase 1 Project for the Phase 1 Project will be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, Developer, its General Contractor and each subcontractor will be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. Developer, the General Contractor and each subcontractor will use their respective best efforts to exceed the minimum percentage of hours stated above, and to employ neighborhood residents in connection with the Phase 1 Project.

(b) 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.

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

(d) Developer, the General Contractor and each subcontractor will provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Phase 1 Project. Each Employer will maintain copies of personal documents supportive of every Chicago employee's actual record of residence and Developer, its General Contractor and each subcontractor shall be entitled to rely solely on such documents.

(e) Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) will be submitted to the Commissioner of DCD in triplicate, which will 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.

(f) Upon 2 Business Days prior written notice, Developer, the General Contractor and each subcontractor will provide full access to their employment records related to the construction of the Phase 1 Project to the Chief Procurement Officer, the Commissioner of DCD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Developer, the General Contractor and each subcontractor will maintain all relevant personnel data and records related to the construction of the Phase 1 Project for a period of at least 3 years after final acceptance of the work constituting the Phase 1 Project.

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

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

(i) When work at the Phase 1 Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Article concerning the worker hours performed by actual residents of the City 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 Article. 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 will be evidenced by approved contract value for the actual contracts) will be surrendered by Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will 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 by the Developer, the General Contractor and/or the subcontractors may subject Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

(j) Nothing herein provided will 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.

(k) Developer will cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Phase 1 Project, entered into after the Closing Date.

**10.03 Developer's MBE/WBE Commitment.** Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements stated in this section, will contractually obligate the General Contractor to agree that during the construction of the Phase 1 Project:

(a) Consistent with the findings which support, as applicable: (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "**Procurement Program**"), and

(ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 *et seq.*, Municipal Code of Chicago (the "**Construction Program**", and collectively with the Procurement Program, the "**MBE/WBE Program**"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Phase 1 Project, at least the following percentages of the MBE/WBE Budget (as stated in Exhibit D-2) must be expended for contract participation under contracts with Minority-Owned Businesses ("**MBEs**") and by Women-Owned Businesses ("**WBEs**"):

1. At least 24 percent by MBEs.
2. At least four percent by WBEs.

(b) For purposes of this Section 10.03 only:

(i) Developer (and any party to whom a contract is let by Developer in connection with the Phase 1 Project) is deemed a "**Contractor**" and this Agreement (and any contract let by Developer in connection with the Phase 1 Project) is deemed a "**Contract**" or a "**Construction Contract**" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

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

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

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Phase 1 Project by Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of: (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Phase 1 Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Phase 1 Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Phase 1 Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Phase 1 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 10.03. In compliance with Section 2-92-730, Municipal Code of Chicago, Developer will not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DCD.

(d) Developer must deliver quarterly reports to the City's monitoring staff during the construction of the Phase 1 Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports will include, inter alia: the name and business address of each MBE and WBE solicited by Developer or the General Contractor to work on the Phase 1 Project, and the responses received from such solicitation; the name and business address of each MBE or WBE actually involved in the Phase 1 Project; a description of the work performed or products or services supplied; the date and amount of such work, product or service; and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. Developer will maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Phase 1 Project for at least 5 years after completion of the Phase 1 Project, and the City's monitoring staff will have access to all such records maintained by Developer, on 5 Business Days' notice, to allow the City to review Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Phase 1 Project.

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

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

(g) Prior to the commencement of the Phase 1 Project, Developer shall be required to meet with the City's monitoring staff with regard to Developer's compliance with its obligations under this Section 10.03. The General Contractor and all major subcontractors are required to attend this pre-construction meeting. During said meeting, Developer will demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 10.03, the sufficiency of which will be approved by the City's monitoring staff. During the Phase 1 Project, Developer shall submit the documentation required by this Section 10.03 to the City's monitoring staff, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Phase 1 Project via written notice and hearings; and (viii) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that Developer is not complying with its obligations under this Section 10.03, will, upon the delivery of written notice to Developer, be deemed an Event of Default. Upon the

occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to Developer to halt the Phase 1 Project, (2) withhold any further payment of any City Funds to Developer or the General Contractor, or (3) seek any other remedies against Developer available at law or in equity.

#### ARTICLE ELEVEN: ENVIRONMENTAL MATTERS

11.01 **Environmental Matters.** Developer hereby represents and warrants to the City that Developer has conducted environmental studies sufficient to conclude that the Phase 1 Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the TIF Ordinances and the Redevelopment Plan. Developer shall make similar representations and warranties for subsequent phases of the Project in future restatements of or amendments to this Agreement.

Developer has provided the City with a copy of the final recorded NFR letter related to the Site (and other land) dated July 31, 1997 as well as the so-called "Comfort Letter" from the IEPA dated June 27, 2005 reaffirming the "continued validity of the 1997 NFR letter for the Site and [wherein IEPA further] agrees that the Site continues to be suitable for residential development and use." The "Site" as referred to in the original NFR letter includes in its entirety the Phase 1 Project Property, along with other real property.

As a condition of issuance of COCs, Developer must provide the City with evidence reasonably acceptable to the City that the 1997 NFR letter remains valid and enforceable pursuant to applicable law (which may, at the City's election, require IEPA review and approval or confirmation), and that the Phase 1 Project Property, or applicable portion thereof, has been fully remediated to the site specific objectives set forth therein.

Developer covenants and agrees to complete all investigation, sampling, monitoring, testing, removal, response, disposal, storage, remediation, treatment and other activities necessary to comply with the terms of the 1997 NFR letter in accordance with the requirements of the IEPA and all applicable laws, including, without limitation, all applicable Environmental Laws ("**Environmental Remediation**"). Developer shall bear sole responsibility for all aspects of the Environmental Remediation and any other investigative and cleanup costs associated with the Phase 1 Project Property and any improvements, facilities or operations located or formerly located thereon, including, without limitation, the removal and disposal of all Hazardous Materials, debris and other materials excavated during the performance of the Environmental Remediation. Developer shall promptly transmit to the City copies of any written communications received from or submitted to the IEPA or other regulatory agencies with respect to the Environmental Remediation.

Without limiting any other provisions hereof, Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of Developer, unless caused by the negligent acts or omissions of the City, its employees or contractors: (i) the



presence of any Hazardous Materials on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Materials from: (A) all or any portion of the Phase 1 Project Property, or (B) any other real property in which Developer, or any person directly or indirectly controlling, controlled by or under common control with Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by Developer), or (ii) any liens against the Phase 1 Project Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or Developer or any of its Affiliates under any Environmental Laws relating to the Phase 1 Project Property, or (iii) failure to comply with any other IEPA requirements for residential properties applicable to the Phase 1 Project Property now existing or hereinafter in effect; and (iv) the invalidation or voidance of the 1997 NFR letter.

#### ARTICLE TWELVE: INSURANCE

12.01 **Insurance Requirements.** Developer's insurance requirements are stated in Schedule B which is hereby incorporated into this Agreement by reference and made a part of this Agreement.

#### ARTICLE THIRTEEN: INDEMNIFICATION

13.01 **General Indemnity.** Developer agrees to indemnify, pay 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 Indemnitees shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees by a third party in any manner relating to or arising out of:

- (i) Any cost overruns as described in Section 4.06; or
- (ii) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or
- (iii) Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Phase 1 Project improvement; or
- (iv) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by Developer or its agents, employees, contractors or persons acting under the control or at the request of Developer; or
- (v) Developer's failure to cure any misrepresentation in this Agreement or any other document or agreement relating hereto; or

(vi) any act or omission by Developer, any Affiliate of Developer, Developer's General Contractor, any Subcontractor, any materialman or any person or entity in privity with Developer concerning the Phase 1 Project Property or the Phase 1 Project.

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer will contribute the maximum portion that it is permitted to pay and satisfy under 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 will survive the termination of this Agreement.

#### **ARTICLE FOURTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT**

14.01 **Books and Records.** Developer will keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual costs of the Phase 1 Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Phase 1 Project. All such books, records and other documents, including but not limited to Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, will be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at Developer's expense. Developer will not pay for salaries or fringe benefits of auditors or examiners. Developer must incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer with respect to the Phase 1 Project.

14.02 **Inspection Rights.** Upon 3 Business Days notice, any authorized representative of the City will have access to all portions of the Phase 1 Project Property or the Phase 1 Project during normal business hours following Bond Closing.

#### **ARTICLE FIFTEEN: 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, will constitute an "Event of Default" by Developer hereunder:

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

(b) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under any other agreement with any person or entity if such failure may have a material adverse effect on Developer's business, property (including the Phase 1 Project Property or the Phase 1 Project), assets (including the Phase 1 Project Property or the Phase 1 Project), operations or condition, financial or otherwise;

(c) the making or furnishing by 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 following Bond Closing, the creation (whether voluntary or involuntary) of, or any attempt by Developer to create, any lien or other encumbrance upon the Phase 1 Project Property or the Phase 1 Project, including any fixtures now or hereafter attached thereto, other than the Permitted Liens or any Permitted Mortgage, 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 Developer or Developer's ultimate parent entity, if any, or for the liquidation or reorganization of Developer or Developer's ultimate parent entity, if any, or alleging that Developer or Developer's ultimate parent entity, if any, is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer's or Developer's ultimate parent entity's, if any, 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 Developer or Developer's ultimate parent entity, if any; provided, however, that if such commencement of proceedings is involuntary, such action will not constitute an Event of Default unless such proceedings are not dismissed within 60 days after the commencement of such proceedings;

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

(g) the entry of any judgment or order against Developer, not covered by insurance for an amount in excess of \$1.0 million which remains unsatisfied or undischarged and in effect for 60 days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under the Lender Financing, if any;

(i) the dissolution of Developer or Developer's ultimate parent entity, if any;

or

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

(k) prior to the issuance of a COC, the sale or transfer of a majority of the ownership interests of Developer without the prior written consent of the City.

For purposes of Sections 15.01(i) and 15.01(j) hereof, a natural person with a material interest in Developer is one owning in excess of ten percent (10%) of Developer's or Developer's ultimate parent entity issued, if any, and outstanding ownership shares or interests.

**15.02 Remedies.**

(a) Upon the occurrence of an Event of Default (subject to applicable cure rights and periods), the City may exercise one or more of the following remedies at the same time: (i) terminate this Agreement and all related agreements; and (ii) suspend disbursement of City Funds. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, also pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. To the extent permitted by law, the City may also lien the Phase 1 Project Property.

(b) The City may draw down some or all of the then current balance of the Unconditional Irrevocable Letter of Credit (subject to applicable cure rights and periods) if Developer fails to: (i) attain a Vertical Area Certificate within six (6) years of Bond Closing; (ii) maintain on an annual basis a minimum occupancy of 65% of the net leasable area within the Vertical Development Area starting on the date of issuance of the Vertical Area Certificate and running for a period of seven (7) years thereafter; (iii) obtain City approval for sale of any component of the Vertical Development Area other than sales of owner-occupied residential dwelling units to end buyers during the period beginning on the date of issuance of the Vertical Area Certificate and running for a period of five (5) years thereafter (provided such City approval shall not be unreasonably withheld or delayed) or notify the City of any such sale that may occur within the period during which the Bonds are outstanding; (iv) attain a Pad Area Certificate within ten (10) years of Bond Closing; or (v) at substantial completion of construction of improvements in the Vertical Development Area and the Pad Sale Area, evidence material compliance with the City Requirements.

**15.03 Curative Period.**

(a) In the event Developer fails to perform a monetary covenant which Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default will not be deemed to have occurred unless Developer has failed to commence to perform such monetary covenant within 10 days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant.

(b) In the event Developer fails to perform a non-monetary covenant which Developer is required to perform under this Agreement, an Event of Default will not be deemed to have occurred unless Developer has failed to cure such default within 30 days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such 30 day period, Developer will not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such 30 day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

**ARTICLE SIXTEEN: MORTGAGING OF THE PROJECT**

16.01 **Mortgaging of the Project.** Any and all mortgages or deeds of trust in place as of the date hereof with respect to the Phase 1 Project Property or Phase 1 Project, if any, or any portion thereof are listed on Exhibit I hereto (and shall include but not be limited to mortgages made prior to or on the date of Bond Closing in connection with Lender Financing, if any) and are referred to herein as the "**Existing Mortgages.**" Any mortgage or deed of trust that Developer may hereafter elect to execute and record or execute and permit to be recorded against the Phase 1 Project Property or Project or any portion thereof without obtaining the prior written consent of the City is referred to herein as a "**New Mortgage.**" Any mortgage or deed of trust that Developer may hereafter elect to execute and record or execute and permit to be recorded against the Phase 1 Project Property or Project 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 Developer as follows:

(a) If a mortgagee or any other party shall succeed to Developer's interest under a New Mortgage in the Phase 1 Project Property or any portion thereof by the exercise of remedies under a mortgage or deed of trust (other than an Existing Mortgage or a Permitted Mortgage) whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.15 hereof, the City may, but will not be obligated to, attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party will be entitled to no rights or benefits under this Agreement, but such party will be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) If any mortgagee or any other party shall succeed to Developer's interest in the Phase 1 Project Property or any portion thereof by the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.15 hereof, then the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the executory obligations and liabilities of "Developer" hereunder. Notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party will have no liability under this Agreement for any Event of Default of Developer which occurred prior to the time such party succeeded to the interest of Developer under this Agreement, in which case Developer will be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of Developer's interest hereunder, such party will be entitled to no rights and benefits under this Agreement, and such party will be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Following Bond Closing and prior to the issuance by the City to Developer of a COC under Article Seven hereof, no New Mortgage will be executed with respect to the Phase 1 Project Property or the Project or any portion thereof without the prior written consent of the Commissioner of DCD. A feature of such consent will be that any New Mortgage

will subordinate its mortgage lien to the covenants in favor of the City that run with the land. After the issuance of a COC, consent of the Commissioner of DCD is not required for any such New Mortgage.

#### ARTICLE SEVENTEEN: NOTICES

17.01 **Notices.** All notices and any other communications under this Agreement will: (A) be in writing; (B) be sent by: (i) telecopier/fax machine, (ii) delivered by hand, (iii) delivered by an overnight courier service which maintains records confirming the receipt of documents by the receiving party, or (iv) registered or certified U.S. Mail, return receipt requested; (C) be given at the following respective addresses:

If to the City:

City of Chicago  
Department of Community Development  
Attn: Commissioner  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
312/744-4190 (Main No.)  
312/744-2271 (Fax)

With Copies To:

City of Chicago  
Corporation Counsel  
Attn: Finance and Economic Development  
Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602  
312/744-0200 (Main No.)  
312/744-8538 (Fax)

If To Developer:

Chicago Lakeside Development, LLC  
c/o McCaffery Interests  
ATTN: Mr. Daniel McCaffery  
875 N. Michigan Ave.  
Suite 1800  
Chicago, IL 60611  
Telephone: 312-944-3777  
Fax: 312-944-7107

With Copies To:

DLA Piper US LLP  
ATTN: Paul Shadle, Esq.  
203 N. LaSalle Street  
Suite 1900  
Chicago, IL 60601-1293  
Telephone: 312-368-4000  
Fax: 312-251-5870

or at such other address or telecopier/fax or telephone number or to the attention of such other person as the party to whom such information pertains may hereafter specify for the purpose in a notice to the other specifically captioned "Notice of Change of Address" and, (D) be effective or deemed delivered or furnished: (i) if given by telecopier/fax, when such communication is confirmed to have been transmitted to the appropriate telecopier/fax number specified in this section, and confirmation is deposited into the U.S. Mail, postage prepaid to the recipient's address shown herein; (ii) if given by hand delivery or overnight courier service, when left at the address of the addressee, properly addressed as provided above; or (iii) two (2) Business Days following deposit in the U.S. Mail.

17.02 **Developer Requests for City or DCD Approval**. Any request under this Agreement for City or DCD approval submitted by Developer will comply with the following requirements:

- (a) be in writing and otherwise comply with the requirements of Section 17.01 (Notices);
- (b) expressly state the particular document and section thereof relied on by Developer to request City or DCD approval (if applicable);
- (c) if applicable, note in bold type that failure to respond to Developer's request for approval by a certain date will result in the requested approval being deemed to have been given by the City or DCD;
- (d) if applicable, state the outside date for the City's or DCD's response; and
- (e) be supplemented by a delivery receipt or time/date stamped notice or other documentary evidence showing the date of delivery of Developer's request.

#### ARTICLE EIGHTEEN: ADDITIONAL PROVISIONS

18.01 **Amendments**. This Agreement and the Schedules and Exhibits attached hereto may not be modified or amended except by an agreement in writing signed by the parties; provided, however, that the City in its sole discretion, may amend, modify or supplement the Redevelopment Plan, which is Exhibit C 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 90 days.

18.02 **Complete Agreement, Construction, Modification**. This Agreement, including any exhibits and the other agreements, documents and instruments referred to herein or contemplated hereby, constitutes the entire agreement between the parties with respect to the Phase I Project Property and the subject matter hereof and supersedes all previous negotiations,

commitments, agreements and writings with respect to such subject matter and the Phase 1 Project Property. This Agreement and the Schedules and Exhibits attached hereto may not be contradicted by evidence of prior, contemporaneous, or subsequent verbal agreements of the parties. There are no unwritten verbal agreements between the parties.

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

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

18.05 **Waivers.** No party hereto will be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by such party. No delay or omission on the part of a party in exercising any right will 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 will 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, will constitute a waiver of any of 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 must not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

18.07 **Parties in Interest/No Third Party Beneficiaries.** The terms and provisions of this Agreement are binding upon and inure to the benefit of, and are enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement will 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. Nothing contained in this Agreement, nor any act of the City or Developer, will be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or Developer.

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

18.09 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had



signed the same document. All such counterparts shall be deemed an original, must be construed together and will constitute one and the same instrument.

**18.10 Counterpart Facsimile Execution.** For purposes of executing this Agreement, a document signed and transmitted by facsimile machine will be treated as an original document. The signature of any party thereon will be considered as an original signature, and the document transmitted will be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile document will be re-executed by other parties in original form. No party hereto may raise the use of a facsimile machine as a defense to the enforcement of this Agreement or any amendment executed in compliance with this section. This section does not supersede the requirements of Article Seventeen: Notices.

**18.11 Severability.** If any provision of this Agreement, or the application thereof, to any person, place or circumstance, is held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances will remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms will provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein. In such event, the parties will negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

**18.12 Conflict.** In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances [and/or the Bond Ordinance, if any] in effect as of the date of this Agreement, such ordinance(s) will prevail and control.

**18.13 Governing Law.** This Agreement is governed by and construed in accordance with the internal laws of the State, without regard to its conflicts of law principles.

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

**18.15 Assignment.** Prior to the issuance by the City to Developer of a COC, 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; provided, however, that Developer may assign, on a collateral basis, this Agreement and the right to receive City Funds to a lender providing Lender Financing, if any, which has been identified to the City as of the Bond Closing. Any successor in interest to Developer under this Agreement will certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Section 8.16 (Real Estate Provisions) and Section 8.26 (Survival of Covenants) hereof, for the Term of the Agreement. Developer hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

18.17 **Force Majeure**. Neither the City nor Developer nor any successor in interest to either of them will 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, war, acts of terrorism, imposition of martial law, plague or other illness, civil disorders, rebellions or revolutions, wage or price controls, disruptions or crashes in the capital markets, bank runs or closures or bank holidays, imposition of capital controls, currency devaluations or replacements or exchanges, strike, shortage of material, wire or wireless communication disruptions or blackouts, power interruptions or blackouts or rationing, fuel shortages or rationing, 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, except to the extent that, the non-performing party is at fault in failing to prevent or causing such default or delay; and provided that such default or delay can not reasonably be circumvented by the non-performing party through the use of alternative sources, work around plans or other means. The individual or entity relying on this section with respect to any such delay will, 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 and Schedules**. All of the exhibits and schedules to this Agreement are incorporated herein by reference. Any exhibits and schedules to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

18.19 **Business Economic Support Act**. Under the Business Economic Support Act (30 ILCS 760/1 et seq. (2006 State Bar Edition), as amended), if Developer is required to provide notice under the WARN Act, Developer will, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

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

18.21 **Construction of Words**. The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully

interchangeable, where the context so requires. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise. The word "shall" means "has a duty to."

18.22 **Date of Performance.** If any date for performance under this Agreement falls on a Saturday, Sunday or other day which is a holiday under Federal law or under State Law, the date for such performance will be the next succeeding Business Day.

18.23 **Survival of Agreements.** Except as otherwise contemplated by this Agreement, all covenants and agreements of the parties contained in this Agreement will survive the Closing Date.

18.24 **Equitable Relief.** In addition to any other available remedy provided for hereunder, at law or in equity, to the extent that a party fails to comply with the terms of this Agreement, any of the other parties hereto shall be entitled to injunctive relief with respect thereto, without the necessity of posting a bond or other security, the damages for such breach hereby being acknowledged as unascertainable.

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

18.26 **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 attorneys' fees, incurred in connection with the enforcement of the provisions of this Agreement but only if the City is determined to be the prevailing party in an action for enforcement. This includes, subject to any limits under applicable law, reasonable attorneys' fees and legal expenses, whether or not there is a lawsuit, including reasonable attorneys' 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.

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

**CHICAGO LAKESIDE DEVELOPMENT, LLC, a**  
Delaware limited liability company

By: \_\_\_\_\_  
Printed  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, William A. Nyberg, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ Commissioner of the Department of 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 he/she signed, sealed, and delivered said instrument pursuant to the authority given to him/her by the City, as him/her 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 \_\_\_\_\_, 2010.

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

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

(SEAL)

[(Sub)Exhibits "B-1" and "B-4" referred to in this Chicago Lakeside Development -- Phase 1 Redevelopment Agreement printed on page 98542 and pages 98608 and 98609, respectively of this *Journal*.]

[(Sub)Exhibits "C", "G", "H", "K" and "L" referred to in this Chicago Lakeside Development -- Phase 1 Redevelopment Agreement unavailable at time of printing.]

[(Sub)Exhibit "M" referred to in this Chicago Lakeside Development -- Phase 1 Redevelopment Agreement constitutes Exhibit "B" to ordinance and printed on pages 98627 through 98630 of this *Journal*.]

Schedules "A" and "B" and (Sub)Exhibits "A", "B-2", "B-3", "D-1", "D-2", "E", "F", "I", "J", "N" and "O" referred to in this Chicago Lakeside Development -- Phase 1 Redevelopment Agreement read as follows:

*Schedule "A".*  
(To Chicago Lakeside Development -- Phase 1  
Redevelopment Agreement)

*Definitions.*

For purposes of this Agreement the following terms shall have the meanings stated forth below:

"Act" has the meaning defined in Recital B.

"Actual Residents of the City" has the meaning defined for such phrase in Section 10.02(c).

"Affiliate(s)" 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 person 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.

"Affordable Units" shall mean housing units meeting the criteria for affordable dwelling units established by the City Department of Community Development under applicable City ordinances and the Five Year Affordable Housing Plan adopted by the City Council.

"Agreement" and also referred to from time-to-time as the "RDA" has the meaning defined in the Agreement preamble.

"Amended and Restated Agreement" has the meaning defined in Section 4.10(a).

"AMI" has the meaning defined in Section 7.01(a).

"Annual Compliance Report" shall mean a signed report from the Developer to the City: (a) itemizing each of the Developer's obligations under the RDA during the preceding calendar year; (b) certifying the Developer's compliance or noncompliance with such obligations; (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance; and (d) certifying that the Developer is not in default with respect to any provision of the RDA, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) compliance with the Land-Use Covenants (Section 8.18); (2) delivery of Financial Statements and unaudited financial statements (Section 8.10); (3) delivery of updated insurance certificates, if applicable (Section 8.11); (4) delivery of evidence of payment of Non-Governmental Charges, if

applicable (Section 8.12); (5) delivery of a substitute letter of credit, if applicable; (6) delivery of evidence of L.E.E.D. Certification has been obtained (Section 3.15(b) and (7) compliance with all other executory provisions of the RDA.

"Available Incremental Taxes" means Incremental Taxes (as defined below) minus the lesser of: (a) 1% of said Incremental Taxes and (b) \$100,000.

"BOLI" has the meaning defined in Section 4.10(e).

"Bonds" has the meaning defined in Section 4.10(e).

"Bond Capacity" has the meaning defined in Section 4.10(f).

"Bond Closing" has the meaning defined in Section 4.10(r).

"Bondable Costs" has the meaning defined in Section 4.10(j).

"Bond Ordinance" has the meaning defined in Recital H.

"Bond Proceeds" means the proceeds of the Bonds to be issued by the City as described in Section 4.10(e).

"Bond Proceeds Budget" has the meaning defined in Section 4.10(k).

"Bundle" has the meaning defined in Section 8.25.

"Business Day" means any day other than Saturday, Sunday or a legal holiday in the State.

"Certificate of Expenditure" has the meaning defined in Section 4.03c).

"Change Order" means any amendment or modification to the Scope Drawings, the Plans and Specifications, or the Project Budget (all as defined below) within the scope of Section 3.04.

"Chicago Lakeside Development - Phase 1 Redevelopment Project Area Special Tax Allocation Fund" means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes (as defined below) will be deposited.

"City" has the meaning defined in the Agreement preamble.

"City Contract" has the meaning defined in Section 8.01(1).

"City Council" means the City Council of the City of Chicago as defined in Recital C.

"City Funds" means the funds described in Section 4.03(a).

"City Group Member" has the meaning defined in Section 8.22.

"City Requirements" has the meaning defined in Section 3.07.

"Closing Date" means the date of execution and delivery of this Agreement by all parties hereto.

"COC(s)" (and also from time to time referred to as the "Certificate(s)") has the meaning defined in Section 7.01.

"Commissioner" or "Commissioner of D.C.D." means that individual holding the office and exercising the responsibilities of the Commissioner or Acting Commissioner of the City's Department of Community Development and any successor City Department.

"Construction Contract" means that certain contract substantially in the form of Exhibit G, to be entered into between the Developer and the General Contractor (as defined below) providing for construction of, among other things, the T.I.F.-Funded Improvements. The parties to this Agreement may agree that the Construction Contract may be provided after Closing Date.

"Construction Program" has the meaning defined in Section 10.03(a).

"Contractors" has the meaning defined in Section 8.25.

"Contribution" has the meaning defined in Section 8.25.

"Corporation Counsel" means the City's Office of Corporation Counsel.

"D.C.D." has the meaning defined in the Agreement preamble.

"Developer" has the meaning defined in the Agreement preamble.

"Developer Phase 1 Scope" has the meaning defined in Section 4.10(f).

"Domestic Partners" has the meaning defined in Section 8.25.

"Employer(s)" has the meaning defined in Section 10.01.

"Environmental Laws" means any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials



Transportation Act (49 U.S.C. Section 1802, et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902, et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401, et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251, et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136, et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1, et seq.); and (x) the Municipal Code of Chicago (as defined below), and including the following Municipal Code 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.

"Environmental Remediation" has the meaning defined in Section 11.01.

"Equity" means funds of Developer (other than funds derived from Lender Financing (as defined below) irrevocably available for the Project, in the amount stated in Section 4.01 hereof, which amount may be increased under Section 4.06 (Cost Overruns).

"Event of Default" has the meaning defined in Section 15.01.

"Existing Mortgages" has the meaning defined in Section 16.01.

"Financial Statements" means the financial statements regularly prepared by Developer, if any, and including, but not limited to, a balance sheet, income statement and cash-flow statement, in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods, for business enterprises operating for profit in the United States of America, and which are delivered to the lender(s) providing Lender Financing pursuant to Developer's loan agreement(s), if any.

"General Contractor" means the general contractor(s) hired by Developer under Section 6.01.

"G.O. Bonds" has the meaning defined in Section 4.10(d).

"G.O. Bond Proceeds" has the meaning defined in Section 4.10(d).

"Governmental Charge" has the meaning defined in Section 8.16(a)(i).

"Hazardous Materials" means 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.

"Human Rights Ordinance" has the meaning defined in Section 10.01(a).

"Identified Parties" has the meaning defined in Section 8.25.

"IEPA" has the meaning defined in Section 4.01(p).

"Incremental Taxes" means 100% of such ad valorem taxes which, pursuant to the T.I.F. 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 for deposit by the Treasurer into a special tax allocation fund established to pay Redevelopment Project Costs (as defined below) and obligations incurred in the payment thereof, such fund for the purposes of this Agreement being the Chicago Lakeside Development -- Phase 1 Redevelopment Project Area Special Tax Allocation Fund.

"Indemnitee" and "Indemnitees" have the respective meanings defined in Section 13.01.

"Labor Department" has the meaning defined in Section 8.08.

"LEED" has the meaning defined in Section 3.15(a).

"LEED ND" has the meaning defined in Section 3.15(a).

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

"Make Whole Amount" has the meaning defined in Section 4.10(g).

"Master Plan" has the meaning defined in Recital E.

"Matrix" has the meaning defined in Section 3.15(c).

"Mayor" has the meaning defined in Section 8.25.

"M.B.E.(s)" has the meaning defined in Section 10.03(b).

"M.B.E./W.B.E. Program" has the meaning defined in Section 10.03(a).

"Minimum Assessed Value" has the meaning defined in Section 8.16(c)(i).

"Minority-Owned Business" has the meaning defined in Section 10.03(b).

"Municipal Code" means the Municipal Code of the City of Chicago as presently in effect and as hereafter amended from time to time.

"ND" has the meaning defined in Section 3.15(a).

"Net Bond Proceeds" has the meaning defined in Section 4.10(c).

"New Environmental Reports" has the meaning defined in Section 4.10(p).

"New Mortgage" has the meaning defined in Section 16.01.

"NFR" has the meaning defined in Section 7.01(a).

"Non-Governmental Charges" means all non-governmental charges, liens, claims, or encumbrances relating to Developer, the Phase 1 Project Property or the Project.

"Note" (and also from time to time referred to as the "City Note") has the meaning defined in Section 4.03(c).

"Other Bonds" has the meaning defined in Section 8.05.

"Other Contract" has the meaning defined in Section 8.25.

"Overall Project" has the meaning defined in Recital D.

"Owners" has the meaning defined in Section 8.25.

"Pad Area Certificate" has the meaning defined in Section 7.01(b).

"Pad Sale Area" has the meaning defined in Recital F.

"PD" has the meaning defined in Recital E.

"Permitted Liens" means those liens and encumbrances against the Phase 1 Project Property and/or the Project stated in Exhibit H.

"Permitted Mortgage" has the meaning defined in Section 16.01.

"Phase 1 Commencement Certificate" has the meaning defined in Section 4.10(m).

"Phase 1 Project" and also "Project" has the meaning defined in Recital F.

"Phase 1 Project Costs" has the meaning defined in Section 4.10(d)(ii).

"Phase 1 Project Property" has the meaning defined in Recital E.

"Phase 1 Project Site Plan" has the meaning defined in Section 4.10(m).

"Phase 1 Scope Costs" has the meaning defined in Section 4.10(m).

"Plans and Specifications" means final construction documents containing a site plan and working drawings and specifications for the Project.

"Political fund-raising committee" has the meaning defined in Section 8.25.

"Pre-Sale Commitment" has the meaning defined in Section 4.10(m).

"Prior Expenditure(s)" has the meaning defined in Section 4.05.

"Procurement Program" has the meaning defined in Section 10.03(a).

"Project" (see above regarding "Phase 1 Project").

"Project Budget" means the budget stated in Exhibit D-1, showing the total cost of the Project by line item, as furnished by Developer to D.C.D., in accordance with Section 3.03.

"Redevelopment Area" means the redevelopment project area as legally described in Exhibit A.

"Redevelopment Plan" has the meaning defined in Recital G.

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

"Registrar" has the meaning defined in Section 4.03(c)(vii).

"Reliance Letters" has the meaning defined in Section 4.10(p).

"Requisition Form" has the meaning defined in Section 4.03(c)(iv)(C).

"Route 41 Completion" has the meaning defined in Section 3.01(b).

"S.A. Bonds" has the meaning defined in Section 4.10(e).

"S.A. Bond Proceeds" has the meaning defined in Section 4.10(e).

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

"Senior Lender Financing Construction Escrow" has the meaning defined in Section 4.10(m).

"Site" has the meaning defined in Recital D.

"Sizing and Underwriting Parameters" has the meaning defined in Section 4.10(d).

"Special Assessment" has the meaning defined in Section 4.10(e).

"Special Assessment Counsel" has the meaning defined in Section 4.10(b).

"Special Assessment Law" has the meaning defined in Section 4.10(d)(ii).

"Special Assessment Supplemental Bond and Procedure Act" has the meaning defined in Section 4.10(d)(ii).

"SRP" has the meaning defined in Section 4.10(p).

"State" means the State of Illinois as defined in Recital A.

"Subowners" has the meaning defined in Section 8.25.

"Survey" means an urban plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Phase 1 Project Property dated within 45 days prior to the Closing Date, reasonably acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State, certified to the City and the Title Company, and indicating whether the Phase 1 Project Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and any updates thereof to reflect improvements to the Phase 1 Project Property as required by the City or the lender(s) providing Lender Financing, if any).

"Term of the Agreement" means the period of time commencing on the Closing Date and ending on December 31, 2034, being the end date for tax collections applicable to the 23<sup>rd</sup> year from the date of the Chicago Lakeside Development -- Phase 1 T.I.F. Ordinances (May 12, 2010).

"T.I.F. Adoption Ordinance" has the meaning stated in Recital C.

"T.I.F. Construction Escrow" has the meaning defined in Section 4.10(m).

"T.I.F. Plan Ordinance" has the meaning defined in Recital C.

"T.I.F. Revenue Projections" has the meaning defined in Section 4.10(f).

"T.I.F. Ordinances" has the meaning stated in Recital C.

"T.I.F.-Funded Improvements" means those improvements of the Project which: (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement, and (iv) are stated in Exhibit E.

"Title Company" means Chicago Title Insurance Company.

"Title Policy" means a title insurance policy in the most recently revised ALTA or equivalent form, showing Developer as the insured, noting the recording of this Agreement as an encumbrance against the Phase 1 Project Property, and a subordination agreement in favor of the City with respect to previously recorded liens against the Phase 1 Project Property related to Lender Financing, if any, issued by the Title Company.

"Unconditional Irrevocable Letter of Credit" has the meaning defined in Section 4.10(d).

"Under Assessment Complaint" has the meaning set forth in Section 8.16(c)(iv).

"Vertical Area Certificate" has the meaning defined in Section 7.01(a).

"Vertical Development Area" has the meaning defined in Recital F.

"W.A.R.N. Act" means the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101, et seq.).

"W.B.E.(s)" has the meaning defined in Section 10.03(b).

"Women-Owned Business" has the meaning defined in Section 10.03(b).

*Schedule "B".*

(To Chicago Lakeside Development -- Phase 1  
Redevelopment Agreement)

*Article Twelve: Insurance Requirements.*

12.01 Insurance.

Developer will provide and maintain, or cause to be provided and maintained, at Developer's own expense, no later than Bond Closing and thereafter during the Term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

(a) Prior To The Closing Date:

(i) Workers' Compensation And Employer's Liability Insurance.

Workers' Compensation and Employer's Liability Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement in statutorily prescribed limits and Employer's Liability coverage with limits of not less than \$100,000 each accident or illness.

(ii) Commercial General Liability Insurance (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 is to be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the work.

(b) Construction. Prior to the construction of any portion of the Phase 1 Project, Developer will cause its architects, contractors, subcontractors, project managers, engineers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

(i) Workers' Compensation And Employer's Liability Insurance.

Workers' Compensation and Employer's Liability Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement in statutorily prescribed limits and Employer's Liability coverage with limits of not less than \$500,000 each accident or illness.

(ii) Commercial General Liability Insurance (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 years following Project completion), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability Insurance (Primary And Umbrella).

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

(iv) Railroad Protective Liability Insurance.

When any work is to be done adjacent to or on railroad or rail transit property or within 50 feet of railroad or rail transit property, contractor must provide, or cause

to be provided with respect to the operations that the contractor performs, 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 Insurance.

When the contractor undertakes any construction, including improvements, betterments, and/or repairs, Developer must cause each contractor to provide, or cause to be provided All Risk Blanket Builders Risk Insurance at replacement cost for materials, supplies, equipment machinery and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable, flood including surface water backup. The City will be named as an additional insured and loss payee.

(vi) Professional Liability.

When any architects; engineers, construction managers, or other professional consultants perform work in connection with this Agreement, Developer must cause such parties to maintain Professional Liability Insurance covering acts, errors, or omissions which shall 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 performed in connection with this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two years.

(vii) Valuable Papers Insurance.

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement by Developer's architects, contractors, subcontractors, project managers and other parties constructing the Project, Developer will cause such parties to maintain Valuable Papers Insurance which must be maintained in an amount to insure against any loss whatsoever, and which must have limits sufficient to pay for the re-creations and reconstruction of such records.

(viii) Contractor's Pollution Liability.

When any environmental remediation work is performed which may cause a pollution exposure, Developer will cause the party performing such work to maintain contractor's Pollution Liability insurance with limits of not less than \$1,000,000



insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. When policies are renewed, 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 one year. The City is to be named as an additional insured on a primary, noncontributory basis.

(ix) Blanket Crime.

Developer must provide Crime Insurance or equivalent covering all persons handling funds under this Agreement, against loss by dishonesty, robbery, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit must be written to cover losses in the amount of the maximum monies collected or received and in the possession of Developer at any given time.

(c) Other Insurance Required.

- (i) Prior to Bond Closing and during construction of the Phase 1 Project, All Risk Property Insurance in the amount of the full replacement value of the Project. The City is to be named as an additional insured.
- (ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Project. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable. The City is to be named as an additional insured.

(d) Other Requirements.

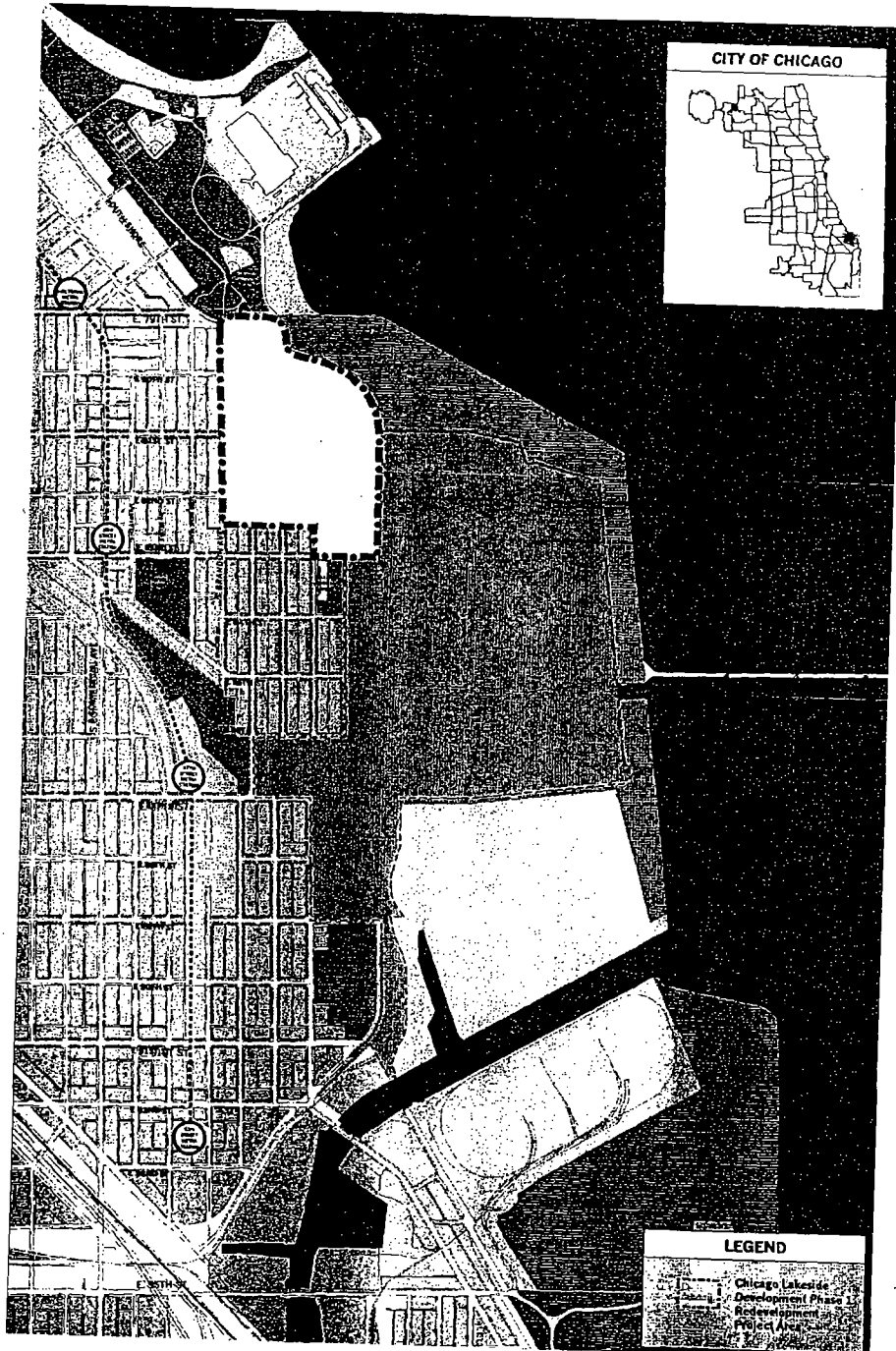
- (i) Developer will furnish the City of Chicago, Department of Community Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of Bond Closing, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring thereafter during the Term of this Agreement. Developer will submit evidence of insurance on the City Insurance Certificate Form or commercial 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 must not be deemed to be a waiver by the City. Developer will advise all insurers of the Agreement provisions regarding insurance. Nonconforming insurance will 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 terminate this Agreement until proper evidence of insurance is provided.

- (ii) The insurance will provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any and all deductibles or self-insured retentions on referenced insurance coverages are borne by Developer.
- (iv) Developer agrees that insurers must waive rights of subrogation against the City, its employees, elected officials, agents, or representatives.
- (v) Developer expressly understands and agrees that any coverages and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.
- (vi) Developer expressly understands and agrees that Developer's insurance is primary and any insurance or self-insurance programs maintained by the City will not contribute with insurance provided by Developer under the Agreement.
- (vii) The required insurance will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (viii) Developer will require its general contractor and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the contractor or subcontractors. All contractors and subcontractors will be subject to the same requirements of Developer unless otherwise specified herein.
- (ix) If Developer, contractor or subcontractor desires additional coverages, Developer, contractor and each subcontractor will be responsible for the acquisition and cost of such additional protection.
- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not, without Developer's written consent, increase such requirements.

*(Sub)Exhibit "B-1".*  
(To Chicago Lakeside Development -- Phase 1  
Redevelopment Agreement)

*Map Of The Overall Project Area (Site).*



*(Sub)Exhibit "A".*  
(To Chicago Lakeside Development -- Phase 1  
Redevelopment Agreement)

*Legal Description Of The Area.*

(Includes Parcel A And The Adjacent Right-Of-Way)

That part of the west half of the southwest quarter of Section 29, the east half of the northeast quarter of Section 31 and the west half of Section 32, Township 38 North, Range 15 East of the Third Principal Meridian, described as follows:

beginning at the intersection of the north line of East 79<sup>th</sup> Street and the northerly extension of the east line of South Brandon Avenue; thence easterly along said north line of East 79<sup>th</sup> Street to the northerly extension of a northeasterly line of South Avenue O per plat of highways recorded November 21, 2008 as Document Number 0832645125; thence southeasterly, easterly, southerly and westerly along the northeasterly and easterly lines of South Avenue O 41 per plat of highways recorded November 21, 2008 as Document Number 0832645125 and March 9, 2006 as Document Number 0606834023 to the south line of East 83<sup>rd</sup> Street per plat of highways recorded March 9, 2006 as Document Number 0606834023; thence westerly along said south line of East 83<sup>rd</sup> Street and its westerly extension to the east line of South Green Bay Road; thence northerly along said east line of South Green Bay Road to the north line of East 83<sup>rd</sup> Street; thence westerly along said north line of East 83<sup>rd</sup> Street to the east line of South Mackinaw Avenue; thence northerly along said east line of South Mackinaw Avenue to a straight line 297 feet north of and parallel to the north line of East 83<sup>rd</sup> Street, said line also being the southerly line of Block 1 in Illinois Steel Company's South Works Resubdivision; thence easterly along said line 297 feet north of and parallel to the north line of East 83<sup>rd</sup> Street and its westerly extension to the west line of South Brandon Avenue; thence northerly along said west line of South Brandon Avenue to the easterly extension of the north line of Lot 11 in Mahan's Subdivision; thence easterly along said line to the east line of South Brandon Avenue; thence northerly along said east line of South Brandon Avenue and its northerly extension to the point of beginning, all in Cook County, Illinois.