Contract Summary Sheet

Contract (PO) Number: 19379

Specification Number: 71838

Name of Contractor: MERCY HOUSING LAKEFRONT

City Department: DEPARTMENT OF HOUSING

Title of Contract: Multi/Englewood Apartments

Term of Contract: Start Date: 12/23/2008

End Date: 12/23/2032

Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):
$2,200,000.00

Brief Description of Work: Multi/Englewood Apartments

Procurement Services Contract Area: COMPTROLLER-OTHER

Vendor Number: 1004223
Submission Date: FEB 5 2009

ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government as defined in Article VII, Section 6(a) of the Illinois Constitution; and

WHEREAS, as a home rule unit of government, the City of Chicago may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the management of its finances is a matter pertaining to the government and affairs of the City of Chicago; and

WHEREAS, the City of Chicago (the "City"), the Illinois Attorney General (the "Attorney General"), and Peoples Energy Corporation and its affiliates ("Peoples Energy") have entered into a settlement agreement to settle the Reconciliation Cases (the "Settlement") whereby Peoples Energy has agreed to pay the City and the Attorney General, jointly, up to $30,000,000, in installments of up to $5,000,000 annually, for the six years beginning in July 2006 (the "Settlement Payments"); and

WHEREAS, the Settlement Payments are intended for, and conditioned upon, application toward the cost, as estimated in the discretion of the City, through the Commissioner of Environment (the "Commissioner"), and the Attorney General, for the design, implementation and administration of programs of conservation and weatherization for low and moderate-income residential dwellings with the goal of reducing energy usage costs (the "Programs"); and

WHEREAS, by an ordinance adopted by the City Council of the City on October 4, 2006, and published in the Journal of Proceedings of the City Council for said date at pages 86749 through 86779, inclusive (the "Ordinance"), the City Council appropriated the Settlement Payments and authorized the City to enter into an intergovernmental agreement (the "Agreement"), by and through the Department of the Environment ("DOE"), pursuant to which DOE and the Attorney General will coordinate the expenditure of Settlement Payments and the development of the Programs;

WHEREAS, the City and the Attorney General propose to develop Programs with the Settlement Payment due July 2008 (the "Third Installment") pursuant to the Budget attached hereto as Exhibit A and Program Descriptions attached hereto as Exhibit B; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Peoples Energy shall pay on or about July 6, 2008, jointly, to the City and the Attorney General the Third Installment in the amount of $5,000,000, of which $4,800,000 shall be delivered to the City and deposited in the Conservation and Weatherization Initiatives Fund (the "Weatherization Fund"). Additionally, Peoples Energy, upon request from the City and Attorney General shall pay the remaining $200,000 shall be delivered to the entities to be designated later by the Attorney General and as agreed to by the City for the North Shore Programs (hereinafter defined).

SECTION 2. Pursuant to the Ordinance, any Settlement Payments paid by Peoples Energy pursuant to the Settlement and deposited into the Weatherization Fund shall be spent as determined by the Commissioner and the Attorney General consistent with the terms of the

Settlement and the Agreement. The Programs to be funded from the Weatherization Fund will be selected by the Commissioner and approved by the Attorney General and may include projects, whether residential improvements or education or otherwise, relating to any of the following: energy conservation; energy efficiency; weatherization; insulation; conservation and weatherization education; or hardship disconnection assistance. Monies in the Weatherization Fund, including interest and investment income, may be used to finance the Programs or be disbursed in connection with the Programs in the form of grants, loans or equity investments. Specific initiatives and Programs contemplated to be funded through monies in the Weatherization Fund are more particularly set forth in Exhibits A and B to this ordinance. The Program Descriptions set forth in Exhibit B are for informational purposes and shall not amend or limit any existing authority to conduct any existing programs described therein, except to the extent necessary to allow for the inclusion of a weatherization and energy efficiency component to be funded pursuant to this ordinance.

SECTION 3. The City and the Attorney General agree that 4% of the Third Installment, in an amount not to exceed $200,000, shall be used, pursuant to the Settlement, for residents of the North Shore (the "North Shore Programs") to be administered by entities to be later agreed upon in writing by the City and the Attorney General. Peoples Energy shall deliver the payment for the North Shore Programs as directed by City and the Attorney General.

SECTION 4. Subject to the approval of the Corporation Counsel as to form and legality, the Commissioner or his or her designee is hereby authorized and the commissioner of any City department, or his or her designee, responsible for the design, implementation or administration of any Program or use and expenditure of funds from the Third Installment, and acting consistently with the powers and duties granted any such commissioner pursuant to the Municipal Code of Chicago, including specifically, but without limitation the Commissioner of Housing, shall be authorized to enter into and execute all such other agreements and instruments and to perform any and all acts as shall be necessary or advisable in connection with the implementation of the Settlement and the carrying out of the Programs, including entering into contracts and grant agreements as well as provide in-kind exchanges, tangible personal property and vouchers for energy efficient household products and materials to eligible homeowners, individuals, groups and organizations.

SECTION 5. To the extent that any current ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this ordinance.

SECTION 6. This ordinance shall be in force and effect upon passage and approval.

Document No. PO2008- ~~5582~~

REFERRED TO COMMITTEE ON
Energy, Environmental Protection & Public Util.

JUL - 9 2008

City Clerk Miguel del Valle City of Chicago

Doc#: 0835931048 Fee: $164.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 12/24/2008 12:03 PM Pg: 1 of 65

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

65

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

This Englewood Apartments Redevelopment Agreement (this "**Agreement**") is made as of this 23rd day of December, 2008, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**") or its Department of Housing ("**DOH**") or any successor department, Mercy Housing Lakefront, an Illinois not-for-profit corporation ("MHL"), and 901 West 63RD Limited Partnership, an Illinois limited partnership ("**901 West**" and sometimes collectively hereinafter referred to with MHL as "**Developer**").

RECITALS

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

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

C. **City Council Authority**: To induce redevelopment pursuant to the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on November 29, 1989: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Englewood Mall Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois designating the Englewood Mall Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Englewood Mall Redevelopment Project Area" (the "**TIF Adoption Ordinance**") (items(1)-(3) collectively referred to herein as the "**TIF Ordinances**"). The redevelopment project area referred to above (the "**Redevelopment Area**") is legally described in Exhibit A hereto.

D. **The Project**: The Project includes the City's conveyance to MHL of the land located in the Redevelopment Area at 901-923 West 63rd Street, Chicago, Illinois 60621, which land is legally described in **Exhibit B** hereto (the "**Property**"). On the Closing Date, MHL will convey the Property to Englewood Apartments, NFP, the general partner of 901 West (the "**General Partner**") as a capital contribution, and the General Partner will convey the Property to 901 West as a capital contribution. Within the time frames set forth in Section 3.01 hereof, the Developer intends to commence and complete construction of a new building containing approximately 99 affordable multi-family rental units (the "**Facility**"). The Project shall mean, collectively, (a) the acquisition of the Property and (b) the construction of the Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on **Exhibit C**. The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. **Redevelopment Plan**: The Project is located in the Redevelopment Area and will be carried out in accordance with this Agreement and the City of Chicago Englewood Mall Area Tax Increment Financing Redevelopment Plan and Project (the "**Redevelopment Plan**") attached hereto as **Exhibit D**.

F. **City Financing**: The City agrees to use, in the amounts set forth in **Section 4.03** hereof, Incremental Taxes (as defined below), to pay for or reimburse MHL for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement. The City, as of the Closing Date, shall allocate and appropriate the amounts set forth in **Section 4.03(iii)** for payment of the Redevelopment Project Costs of the Project. The City may also, in its discretion, issue Bonds (as defined in **Section 8.05**) secured by Incremental Taxes pursuant to an ordinance at a later date as allowed in **Section 8.05** hereof, the proceeds of which may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Incremental Taxes, or in order to reimburse the City for the costs of TIF-Funded Improvements.

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

SECTION 1. RECITALS

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

SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

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

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

"**Available Incremental Taxes** shall mean an amount equal to ninety percent (90%) of the Incremental Taxes deposited in the Englewood Mall Redevelopment Project Area TIF Fund as adjusted to reflect the amount of the City Fee described in **Section 4.05(b)** hereof.

"**Bond(s)**" shall have the meaning set forth for such term in **Section 8.05** hereof.

"**Bond Ordinance**" shall mean the City ordinance authorizing the issuance of Bonds.

"**Certificate**" shall mean the Certificate of Completion described in **Section 7.01** hereof.

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

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

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

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

"**Construction Contract**" shall mean that certain contract, substantially in the form attached hereto as **Exhibit E**, to be entered into between the Developer and the General Contractor providing for construction of the Project.

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

"**Deed**" shall have the meaning set forth in **Section 3.13(b)** hereof.

"**DOE**" shall mean the City's Department of Environment.

"**Draft NFR Letter**" shall mean a draft comprehensive NFR Letter from the IEPA for the Property based on TACO Tier I residential remediation objectives, as amended or supplemented from time to time.

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

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

"**Environmental Laws**" shall mean any and all Laws 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 1801 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to 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 Work**" shall mean all investigation, sampling, monitoring, testing, removal, response, disposal, storage, remediation, treatment and other activities necessary to obtain a Final NFR Letter for the Property in accordance with the terms and conditions of the Draft NFR Letter, the Remediation Objectives Report (as amended or supplemented from time to time), the Remedial Action Plan (as amended or supplemented from time to time), all requirements of the IEPA and all applicable Laws, including, without limitation, all applicable Environmental Laws.

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

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

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

"**Final NFR Letter**" shall mean a final comprehensive NFR Letter from the IEPA approving the use of the Property for the construction, development and operation of the Project. The Final NFR Letter shall state that the Property meets TACO Tier I residential remediation objectives as set forth in 35 Ill. Adm. Code Part 742, but may be reasonably conditioned upon use and maintenance of engineered barriers and other institutional or engineering controls acceptable to the IEPA.

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

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

"**Hazardous Materials**" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Laws, 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.

"**IEPA**" shall mean the Illinois Environmental Protection Agency.

"**Incremental Taxes**" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the Englewood Mall TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

"**Laws**" shall mean all applicable federal, state, local or other laws (including common law), statutes, codes, ordinances, rules, regulations or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal.

"**Lender**" shall mean any provider of Lender Financing.

"**Lender Financing**" shall mean funds borrowed by the Developer from any lender and available to pay for costs of the Project, in the amount set forth in **Section 4.01** hereof.

"**Losses**" shall mean any and all debts, liens, claims, actions, causes of action, suits, demands, complaints, legal or administrative proceedings, losses, damages, assessments, obligations, liabilities, executions, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs, expenses, and disbursements of any kind or nature whatsoever (including, without limitation, Remediation Costs, reasonable attorneys' fees and expenses, consultants' fees and expenses and court costs).

"**MBE(s)**" 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.

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

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

"**NFR Letter**" shall mean a "No Further Remediation" letter issued by the IEPA pursuant to the SRP and, with respect to any USTs subject to Title 16 of the Illinois Environmental Protection Act, a "No Further Remediation" letter with respect to such USTs pursuant to Title 16, whichever is applicable, as amended or supplemented from time to time.

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

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

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

"**Prior Expenditure(s)**" shall have the meaning set forth in **Section 4.05(a)** hereof.

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

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

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

"**Purchase Price**" shall have the meaning set forth in **Section 3.13(a)**.

"**RECs**" shall have the meaning set forth in **Section 11.01** hereof.

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

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

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

"**Released Claims**" shall have the meaning set forth in **Section 11.04** hereof.

"**Remediation Costs**" shall mean governmental or regulatory body response costs, natural resource damages, property damages, and the costs of any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon.

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

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

"**SRP**" shall mean the IEPA's Site Remediation Program as set forth in Title XVII of the Illinois Environmental Protection Act, 415 ILCS 5/58 et seq., and the regulations promulgated thereunder.

"**Survey**" shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility and related improvements as required by the City or Lender).

"**TACO**" shall mean the Tiered Approach to Corrective Action Objectives codified at 35 Ill. Adm. Code Part 742 *et seq.*

"**Term of the Agreement**" shall mean the period of time commencing on the Closing Date and ending on December 31, 2023, the date on which the Redevelopment Area is no longer in effect.

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

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

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

"**Title Company**" shall mean First American Title Insurance Company.

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

"**UST(s)**" shall mean underground storage tank(s) whether or not subject to Title 16 of the Illinois Environmental Protection Act, including without limitation (i) any underground storage tank as defined in 415 ILCS 5/57.2, (ii) any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes, (iii) any tank used for storing heating oil for consumption on the premises where stored, (iv) any septic tank, (v) any tank that is excluded from the definition in 415 ILCS 5/57.2 based upon the existence of any Hazardous Substance therein, and (vi) any pipes connected to items (i) through (v) above.

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

"**WBE(s)**" 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.

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof: (a) commence demolition work and further environmental investigation and analysis no later than January 31, 2009; and (b) complete construction no later than January 31, 2011.

3.02 Scope Drawings and Plans and Specifications The Developer has delivered the Scope Drawings and Plans and Specifications to DOH and DOH has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DOH as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan as in effect on the date of this Agreement and all applicable Laws. The Developer shall submit all

necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budget. The Developer has furnished to DOH, and DOH has approved, a Project Budget showing total costs for the Project in an amount not less than Sixteen Million Six Hundred Seventy-Two Thousand Three Hundred Eighty Six Dollars ($16,672,386). The Developer hereby certifies to the City that (a) the City Funds, together with the Lender Financing and Equity described in **Section 4.02** hereof, shall be sufficient to complete the Project; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DOH certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

3.04 Change Orders. Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by the Developer to DOH concurrently with the progress reports described in **Section 3.07** hereof; provided, that any Change Order relating to any of the following must be submitted by the Developer to DOH for DOH's prior written approval: (a) a reduction in the square footage of the Facility by more than five percent (5%); (b) a change in the use of the Property to a use other than multi-family affordable rental units; (c) a delay in the completion of the Project; or (d) Change Orders costing more than $25,000 each, to an aggregate amount of $100,000. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DOH's written approval (to the extent required in this section). The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer. Notwithstanding anything to the contrary in this **Section 3.04**, Change Orders costing less than Twenty-Five Thousand Dollars ($25,000.00) each, to an aggregate amount of One Hundred Thousand Dollars ($100,000.00), do not require DOH's prior written approval as set forth in this **Section 3.04**, but DOH shall be notified in writing of all such Change Orders prior to the implementation thereof and the Developer, in connection with such notice, shall identify to DOH the source of funding therefor.

3.05 DOH Approval. Any approval granted by DOH of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DOH pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

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

3.07 Progress Reports and Survey Updates The Developer shall provide DOH with written monthly progress reports detailing the status of the Project, including a revised completion

date, if necessary (with any change in completion date being considered a Change Order, requiring DOH's written approval pursuant to **Section 3.04**). The Developer shall provide three (3) copies of an updated Survey to DOH upon the request of DOH or any Lender, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect An independent agent or architect (other than the Developer's architect) approved by DOH shall be selected to act as the inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DOH, prior to requests for disbursement for costs related to the Project. With the consent of DOH, the inspecting architect may be the inspecting architect engaged by any Lender (or other financing participant to the Project), provided that said architect is an independent architect licensed by the State of Illinois, or an inspecting agent of DOH.

3.09 Barricades Prior to commencing any construction requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable Laws. DOH retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

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

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

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

3.13 Conveyance of Property from City to MHL The following provisions shall govern the City's conveyance of the Property to MHL:

(a) Form of Deed. The City shall convey the Property to MHL by quitclaim deed (the "**Deed**") for the sum of One Dollar ("**Purchase Price**"), subject to the terms of this Agreement and, without limiting the quitclaim nature of the deed, the following:

(i) the Redevelopment Plan;

(ii) the standard exceptions in an ALTA title insurance policy;

(iii) all general real estate taxes and any special assessments or other taxes;

(iv) all easements, encroachments, covenants and restrictions of record and not shown of record;

(v) such other title defects as may exist; and

(vi) any and all exceptions caused by the acts of the Developer or its agents.

(b) Condition of Title. The City shall have no obligation to cure title defects; provided; provided, however, if necessary to clear title of exceptions for general real estate tax liens attributable to taxes (as disclosed in a title commitment obtained by Developer and provided to the City prior to the Closing Date) due and payable prior to the Closing Date, the City shall submit a tax abatement letter to the county, and/or file a Certificate of Error Application with the county, and/or file a tax injunction suit or motion to vacate a tax sale, seeking the exemption or waiver of such pre-closing tax liabilities. The City shall have no further duties with respect to any such taxes. The Developer shall be solely responsible for and shall pay all costs associated with obtaining and updating a title insurance commitment for the Property (including all search, continuation and later-date fees) and the Title Policy.

(c) Property Transfer. The conveyance of the Property shall take place on the Closing Date at the downtown offices of the Title Company or such other place as the parties may mutually agree upon in writing; provided, however, in no event shall the closing of the Property conveyance occur unless the Developer has satisfied all conditions precedent set forth in this Agreement, unless DPD, in its sole discretion, waives such conditions. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement. The City will not provide a gap undertaking.

(d) Recording Costs. The Developer shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the Property to MHL.

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

(f) Property Donation. The City hereby agrees to convey, and MHL hereby agrees to accept, upon and subject to the terms and conditions of this Agreement, the Property for the Purchase Price, which is to be paid to the City on the Closing Date. MHL and the City acknowledge and agree that the fair market value of the Property exceeds the Purchase Price and that the City has only agreed to convey the Property to MHL for the Purchase Price because the Developer has agreed to execute this Agreement and comply with its terms and conditions, including, without limitation, the affordability provisions applicable to the affordable units and the environmental provisions in **Section 11**.

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds The cost of the Project is estimated to be $16,672,386, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to **Sections 4.03(b) and 4.06**)	$11,481,206 *
Lender Financing (includes loan from the State of Illinois Housing Development Authority HOME Progam)	$2,000,000*
MHL Loans and Donations (includes DCEO, ICEF and other grants & IAHTC donation credit syndication proceeds, all of which may be loaned by MHL to 901 West and secured by a mortgage on the property or contributed as a capital contribution by MHL to the General Partner which will make a capital contribution to 901 West)	$550,750*
Deferred Developer Fee (provided, however, that MHL may obtain certain FHLB/AHP proceeds following the Closing Date and loan them to 901 West (which loan may be secured by a mortgage) and, in such case, the deferred developer fee shall be reduced by the amount of such loan)	$640,430*
City Tax-Increment Financing Funds	$ 2,000,000*
ESTIMATED TOTAL:	**$16,672,386**

* or such other amount to which the City may consent

Notwithstanding anything to the contrary included within this Agreement, the City and the Developer acknowledge and agree that 901 West intends to arrange a construction loan from U.S. Bank National Association in the approximate amount of $10,750,000 secured by a first priority mortgage on the Property ("Construction Loan") during the term of construction, which Construction Loan shall be repaid from equity provided by 901 West's Limited Partner and potentially other sources of funds following completion of the Facility's construction.

4.02 Developer Funds. Equity and/or Lender Financing may be used to pay any Project cost, including but not limited to Redevelopment Project Costs.

4.03 City Funds.

(a) All Payments of City Funds Subject to Satisfaction of Section 11. All payments set forth below shall not be delivered until after the Developer satisfies all of its duties, obligations and liabilities regarding satisfaction of the environmental condition of the Property as set forth in **Section 11** hereof including, without limitation, performing or engaging an environmental consultant to perform a Phase II environmental site assessment of the Property to determine (i) any environmental risks associated with development of the Project; and (ii) whether or not to enroll the

Property in the IEPA SRP Program in order to obtain a Draft NFR Letter (or a determination by DOE that enrolling the Property in the IEPA SRP Program is not necessary).

(b) Uses and Payment of City Funds. **(i)** An amount equal to the lesser of ten percent (10%) of City Funds and two hundred thousand dollars ($200,000) shall be paid to MHL for TIF Funded Improvements or Redevelopment Project Costs incurred by MHL prior to Closing at the later of **(A)** Closing, and **(B)** upon receipt of the Draft NFR Letter (or a determination by DOE that enrolling the Property in the IEPA SRP Program is not necessary). The balance of City Funds may only be used to reimburse MHL for TIF Funded Improvements and shall be paid as follows: **(ii)** An amount equal to the lesser of **(A)** Forty-Five percent (45%) of City Funds and **(B)** nine hundred thousand dollars ($900,000) shall be paid when the construction administration division/architecture of DOH (or any successor department) has determined that a minimum fifty percent (50%) of the hard trade line items of the Contractor's Sworn Statement, as approved by DOH, has been completed and **(iii)** the balance of the City Funds in an amount equal to the lesser of nine hundred thousand dollars ($900,000) or forty-five percent (45%) of the City Funds will be paid upon issuance of the Certificate pursuant to Section 7.01. All City Funds shall be used solely to pay for or reimburse MHL for the cost of TIF-Funded Improvements that constitute Redevelopment Project Costs. **Exhibit C** sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b) and 4.07(d)**), contingent upon receipt by the City of documentation satisfactory in form and substance to DOH evidencing such cost and its eligibility as a Redevelopment Project Cost. Notwithstanding the obligation to reimburse the Developer as set forth in this **Section 4.03(a)**, the maximum amount of City Funds shall be reduced as follows: on a $0.50-for-$1 basis to the extent that the actual Project costs are less than the budgeted Project costs as set forth in Project Budget.

(c) Sources of City Funds.

i. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to provide City funds (the "**City Funds**") solely from Available Incremental Taxes to reimburse the Developer for the costs of the TIF-Funded Improvements in the amounts determined under **Section 4.03(b)**.

ii. City Funds shall be paid to MHL hereunder, as set forth in Section 4.03 (b) above.

iii. Payments to MHL pursuant to **Section 4** (each an "Installment") shall only be made upon the submission by MHL of a Requisition Form in accordance with **Section 4.04**. Such Installments shall be in the amounts set for in **Section 4.03(b)**; provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed Two Million Dollars ($2,000,000); and provided further, that the $2,000,000 to be derived from Available Incremental Taxes and/or TIF Bond proceeds, if any, shall be available to pay costs related to TIF-Funded Improvements and allocated only so long as the amount of Available Incremental Taxes which have been deposited into the Englewood Mall TIF Fund are sufficient to pay for such costs by the City for that purpose as of the Closing Date.

iv. City Funds derived from Available Incremental Taxes and available to pay such costs and allocated for such purposes as of the Closing Date shall be paid in accordance with this Agreement only so long as no Event of Default or condition for which the giving of notice or the passage of time, or both, would constitute an Event of Default exists under this Agreement.

The Developer acknowledges and agrees that the City's obligation to pay any City Funds is contingent upon the conditions set forth in parts (i), (ii), (iii) and (iv) above, as well the Developer's satisfaction of all other applicable terms and conditions of this Agreement. In the event that such conditions are not fulfilled, the amount of Equity to be contributed by the Developer pursuant to **Section 4.01** hereof shall increase proportionately.

4.04 Requisition Form. Upon request for payment of each Installment by MHL, MHL shall provide DPD with a Requisition Form (the form of which is attached as **Exhibit H**), along with the documentation described therein. Within thirty (30) days of receipt of a Requisition Form, DPD shall notify the Developer whether additional information is needed to evaluate the funding request. Upon DPD's request, the Developer shall meet with DPD to discuss any Requisition Form(s).

4.05 Treatment of Prior Expenditures.

(a) Prior Expenditures. Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the **"Prior Expenditures"**). DPD shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. **Exhibit I** hereto sets forth the prior expenditures approved by DPD as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to MHL, but shall reduce the amount of Equity and/or Lender Financing required to be contributed by the Developer pursuant to **Section 4.01** hereof.

(b) City Fee. Annually, the City may allocate an amount not to exceed ten percent percent (10%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

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

4.07 Preconditions of Disbursement. As a condition to the disbursement of City Funds hereunder, MHL shall submit, at the time of the submission of each Requisition Form in accordance with **Section 4.04**, documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its sole discretion. Delivery by the Developer to DPD of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

(a) the total amount of the disbursement request represents the actual amount paid or payable to, as applicable, (1) the source(s) who have provided funds for the Project and (2) the

General Contractor and/or subcontractors who have performed work on the Project, and/or their payees;

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

(c) the Developer has approved all work and materials for the disbursement request, and such work and materials conform to the Plans and Specifications;

(d) the representations and warranties contained in this Redevelopment Agreement are true and correct and the Developer is in compliance with all covenants contained herein;

(e) the Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company; and

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

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

4.08 Conditional Payment of City Funds. The City Funds being provided hereunder are being provided to the Developer on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed if the Property, or any portion thereof, ceases to be utilized as affordable rental housing during the Term of the Agreement. Furthermore, after the issuance of the Certificate pursuant to Section 7.01, it shall be in DPD's sole discretion to make any payment pursuant to this Agreement upon and after the occurrence of any action described in Section 8.01(j) for which the Developer did not receive the prior written consent of the City. The payment of City Funds is subject to being terminated and/or reimbursed as provided in **Section 15**.

SECTION 5. CONDITIONS PRECEDENT

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

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

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

5.03 Other Governmental Approvals. The Developer has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD. Such approvals shall include, without limitation, all building permits necessary for the Project.

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

5.05 Acquisition and Title. On the Closing Date, the Developer has furnished the City with a pro forma copy of the Title Policy for the Property, certified by the Title Company, showing the 901 West as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on **Exhibit F** hereto and evidences the recording of this Agreement pursuant to the provisions of **Section 8.17** hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including, but not limited to, an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey. The Developer has provided to DPD, on or prior to the Closing Date, certified copies of all easements and encumbrances of record with respect to the Property not addressed to DPD's satisfaction by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. The Developer, at its own expense, has provided the City with searches under the names of (a) 901 West, (b) the General Partner (Englewood Apartments NFP) and (c) MHL as follows:

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

showing no liens against the Developer, the Property, Englewood NFP or MHL or any fixtures now or hereafter affixed thereto, except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company.

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

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

5.09 Opinion of the Developer's Counsel. On the Closing Date, the Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as **Exhibit J**, with such changes as required by or acceptable to Corporation Counsel.

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

5.11 Financial Statements. The Developer has provided Financial Statements to DPD for its most recently completed fiscal year, and audited or unaudited interim financial statements for the period after the end of the most recently completed fiscal year.

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

5.13 Environmental. The Developer has provided DPD with copies of all environmental reports completed with respect to the Property, and has further provided the City with letters from the environmental engineers who completed such reports, authorizing the City to rely on such reports.

5.14 Organizational Documents; Economic Disclosure Statements. The Developer has provided, as applicable, a copy of its Articles of Incorporation or Certificate of Limited Partnership 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 all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws of the corporation or Limited Partnership Agreement; and such other organizational documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

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

SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors. The City has approved the Developer's selection of Jenkins of Illinois, an Illinois limited liability company, as general contractor (the "General Contractor"). The Developer shall submit copies of the Construction Contract to DPD in accordance with **Section 6.02** below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof. The Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

6.02 Construction Contract. Prior to the execution thereof, the Developer shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to handle

the Project in accordance with **Section 6.01** above, for DPD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such contract by the Developer, the General Contractor and any other parties thereto, the Developer shall deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

6.03 Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, the Developer shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better using a bond in a form acceptable to DPD or a letter of credit. The City shall be named as obligee or co-obligee on any such bonds.

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

6.05 Other Provisions. In addition to the requirements of this **Section 6**, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to **Section 3.04** (Change Orders), **Section 8.07** (Employment Profile), **Section 8.08** (Prevailing Wage), **Section 10.01(e)** (Employment Opportunity), **Section 10.02** (City Resident Employment Requirement), **Section 10.03** (MBE/WBE Requirements, as applicable), **Section 12** (Insurance) and **Section 14.01** (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof.

SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion.

(a) Upon completion of the construction of the Project and receipt of a Final NFR Letter (if required) in accordance with the terms of this Agreement, and upon Developer's written request, DPD shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement.

(b) DPD shall respond to the Developer's written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures.

(c) Developer acknowledges that the City will not issue a Certificate until the following conditions have been met:

(i) Developer has provided DPD with evidence acceptable to DPD showing that Developer has completed the Project in compliance with building permit requirements, including, without limitation, receipt of all required certificates of occupancy for the Project (including all units); and

(ii) one hundred per-cent (100%) of the units to be constructed shall be have received a Certificate of Occupancy; and

(iii) the Developer has provided DPD, with evidence acceptable to DPD, of the total amount of both Project costs and all TIF eligible costs; and

(iii) the Developer has given the City written notification that the Project, including all of the TIF-Funded Improvements, has been completed; and

(iv) City's monitoring unit has determined in writing that the Developer is in complete compliance with all requirements of **Sections 8.08** and **10**.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at **Sections 8.02, 8.18, 8.19, 8.20** and **11.04** as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in **Section 8.02** shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to **Section 18.15** of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

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

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

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing such TIF-Funded Improvements exceeds the amount of City Funds available pursuant to **Section 4.01**, the Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of the City Funds from the Developer, 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 TIF Bonds, if any.

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

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

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

(a) 901 West is an Illinois limited partnership; Englewood Apartments NFP is an Illinois not-for-profit corporation; and Mercy Housing Lakefront is an Illinois not-for-profit corporation, each duly organized, validly existing, qualified to do business in Illinois, and each 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) each of 901 West, the General Partner and MHL has the right, power and authority to enter into, execute, deliver and perform this Agreement, as applicable hereto;

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

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, 901 West shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to **Section 8.15** hereof);

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

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

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

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

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

(j) prior to the issuance of the Certificate pursuant to **Section 7.01**, the Developer shall not do any of the following without the prior written consent of DPD, which consent shall be in DPD's

sole discretion: (1) be a party to any merger, liquidation or consolidation; (2) sell (including, without limitation, any sale and leaseback), transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto); (3) enter into any transaction outside the ordinary course of the Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget;

(l) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City;

(m) neither the Developer nor any affiliate of the Developer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term affiliate, when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise; and

(n) 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**"), shall 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 (as defined below) 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 shall 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 of Chicago, as amended.

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in **Sections 3.02** and **3.03** hereof, and the Developer's receipt of all required building permits and governmental approvals, including, without limitation, a Draft NFR Letter if required under **Section 11.01** below, and a satisfactory Phase II report, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, Draft NFR Letter (if applicable) and all Laws applicable to the Project, the Property and/or the Developer, including, without limitation, all Environmental Laws. The covenants set forth in this **Section 8.02** shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

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

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

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

8.06 Employment Opportunity; Progress Reports. The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in **Section 10** hereof. The Developer shall

deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.08, 10.02** and **10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.

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

8.08 Prevailing Wage. Unless required by the Illinois Housing Development Authority ("IHDA") to pay federal "Davis-Bacon" wages pursuant to the terms of the IHDA Home loan, the Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this **Section 8.08**.

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

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

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

8.12 Financial Statements. The Developer shall obtain and provide to DPD Financial Statements for the Developer's fiscal year ended December 31, 2006 and for each year thereafter within 90 days after the end of such fiscal year for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

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

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

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this **Section 8.14**); or

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

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

8.16 Compliance with Laws. To the best of the Developer's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable Laws pertaining to or affecting the Project and the Property. Upon the City's request, the Developer shall provide evidence satisfactory to the City of such compliance.

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

8.18 Real Estate Provisions.

(a) Governmental Charges.

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

(ii) Right to Contest. The Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to DPD of the Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

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

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

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

discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

(c) Real Estate Taxes.

(i) Acknowledgment of Real Estate Taxes. The Developer agrees that for the purpose of this Agreement, the minimum assessed value of the Property ("Minimum Assessed Value") is shown on **Exhibit K** attached hereto and incorporated herein by reference.

(ii) Real Estate Tax Exemption. With respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, 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; provided, however, nothing contained in this provision shall preclude Developer from applying for and receiving any reduction in the amount of real estate taxes payable for the Project or the Property, subject to the provisions of clause (iii) below.

(iii) No Reduction in Real Estate Taxes. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in **Exhibit K**; provided, however, the Developer is permitted to apply for a Class 9 designation from Cook County even if such designation with respect to the Property would result in a Minimum Assessed Value below that shown in **Exhibit K**.

(iv) No Objections. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Underassessment Complaint 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 "Underassessment Complaint" as used in this Agreement shall mean any complaint seeking to increase the assessed value of the Property 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 8.18(c)** are covenants running with the land and this Agreement shall be recorded by the Developer as a memorandum thereof, at the Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon the Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof; provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Developer agrees that any sale (including, without limitation, any sale and leaseback), lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this **Section 8.18(c)** to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of the Developer, its

successors or assigns, may waive and terminate the Developer's covenants and agreements set forth in this **Section 8.18(c)**.

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

(a) The Facility shall be operated and maintained solely as residential rental housing;

(b) All of the units in the Facility shall be available for occupancy to and be occupied solely by one or more persons qualifying as Low Income Families (as defined below) upon initial occupancy; and

(c) All of the units in the Facility have monthly rents, payable by the respective tenant, at or below **(i)** the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended) **or** low income housing tax credit restrictions either for a period of thirty (30) years. If applicable, at least forty percent (40%) of the units in the Facility shall be occupied by Low Income Families or at least twenty percent (20%) of the units in the Facility shall be occupied by families whose annual income does not exceed fifty percent (50%) of the Chicago—area median income **or** if required by a combination of funding sources (e.g. low-income housing tax credits along with IHDA home dollars) at least forty percent (40%) of the units in the Facility shall be occupied by families whose annual income does not exceed fifty percent (50%) of the Chicago—area median income **and (ii)** the maximum allowable under the rules specified in Section 42(g)(2) for families with incomes equal to fifty percent (50%) or less of the median income for the Chicago Standard Metropolitan Statistical Area (if applicable, at least twenty percent of the units in the Facility shall be occupied by such families); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income.

(d) As used in this **Section 8.19**, the following terms has the following meanings:

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

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

(e) The covenants set forth in this **Section 8.19** shall run with the land and be binding upon any transferee.

(f) The City and the Developer may enter into a separate agreement to implement the provisions of this **Section 8.19**.

8.20 Occupancy; Permitted Uses. Developer shall cause the Property to be used in accordance with **Section 8.19** hereof and the Redevelopment Plan. The covenants contain in this **Section 8.20** shall run with the land and be binding upon any transferee for the Term of the Agreement.

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

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

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

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

SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

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

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

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

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

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

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

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

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code 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 Project, at least the following percentages of the costs of construction as set forth in the construction contract approved by DOH (the "**MBE/WBE Budget**") shall be expended for contract participation by MBEs and by WBEs:

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

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

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

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

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to

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

SECTION 11. ENVIRONMENTAL MATTERS

11.01 Environmental Site Assessment. The Developer represents and warrants to the City that the Developer has obtained a Phase I environmental site assessment of the Property in accordance with the requirements of the ASTM E1527-05 standard, and has furnished a copy of the Phase I report to DOE. The parties acknowledge and agree that the Phase I report identified certain recognized environmental conditions ("**RECs**"), and recommended further investigation. As a condition precedent to the payment of any City Funds hereunder, the Developer shall perform a Phase II environmental site assessment of the Property for the purpose of determining whether any environmental or health risks would be associated with the development of the Project. If the Phase II report discloses the presence of contaminants exceeding TACO Tier I residential remediation objectives on or under the Property, the Developer shall either enroll the Property in the IEPA's SRP Program and take all necessary steps to obtain a Draft NFR Letter or provide the City with written notification that the Developer does not wish to proceed with the remediation and construction of the Project. Unless DOE reasonably determines, after consultation with the environmental consultant responsible for the Phase II and the Developer, that it is not necessary to enroll the Property in the SRP, the Developer acknowledges and agrees that it may not commence construction on the Property, and that the City will not make any payments to the Developer of City Funds, until the IEPA issues and DOE reasonably approves a Draft NFR Letter.

11.02 Environmental Remediation. If the Property does not meet TACO Tier I residential remediation objectives as determined pursuant to **Section 11.01** above and, following their review of

the Phase II, the City provides the first installment of the City Funds and Developer maintains its intent to undertake the Project, the Developer shall complete all Environmental Remediation Work necessary to obtain a Final NFR Letter, including, without limitation, preparing and submitting a Remedial Action Completion Report to the IEPA. The Developer shall continuously and diligently pursue the Final NFR Letter using all reasonable means. The Developer acknowledges and agrees that the City will not issue a Certificate until the IEPA has issued, and DOE has approved, a Final NFR Letter for the Property, unless DOE has previously determined that it was not necessary to enroll the Property in the SRP. The City shall have the right to approve any changes or modifications to the Remediation Objectives Report, Remedial Action Plan, Remedial Action Completion Report or other documents submitted to the IEPA in connection with the Draft NFR Letter or Final NFR Letter, which approval shall not be unreasonably withheld. The Developer shall bear sole responsibility for completing all aspects of the Environmental Remediation Work and any other investigative and cleanup costs associated with the Property and any improvements, facilities or operations located or formerly located thereon, including, without limitation, the removal and disposal of all Hazardous Substances, debris and other materials excavated during the performance of the Environmental Remediation Work or construction of the Project. The Developer shall promptly transmit to the City copies of any written communications received from the IEPA or other regulatory agencies with respect to the Environmental Remediation Work.

11.03 "AS IS" SALE. THE DEVELOPER ACKNOWLEDGES THAT IT HAS HAD ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE STRUCTURAL, PHYSICAL AND ENVIRONMENTAL CONDITION AND RISKS OF THE PROPERTY AND ACCEPTS THE RISK THAT ANY INSPECTION MAY NOT DISCLOSE ALL MATERIAL MATTERS AFFECTING THE PROPERTY. THE DEVELOPER AGREES TO ACCEPT THE PROPERTY IN ITS "AS IS," "WHERE IS" AND "WITH ALL FAULTS" CONDITION AT CLOSING WITHOUT ANY COVENANT, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, AS TO THE STRUCTURAL, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PURPOSE WHATSOEVER. THE DEVELOPER ACKNOWLEDGES THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTION AND OTHER DUE DILIGENCE ACTIVITIES AND NOT UPON ANY INFORMATION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL STUDIES OR REPORTS OF ANY KIND) PROVIDED BY OR ON BEHALF OF THE CITY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. THE DEVELOPER AGREES THAT IT IS THE DEVELOPER'S SOLE RESPONSIBILITY AND OBLIGATION TO PERFORM ANY ENVIRONMENTAL REMEDIATION WORK AND TAKE SUCH OTHER ACTION AS IS NECESSARY TO PUT THE PROPERTY IN A CONDITION WHICH IS SUITABLE FOR ITS INTENDED USE.

11.04 Release and Indemnification. Without limiting any other provisions hereof, the Developer, for itself and its successors and assigns, hereby completely and forever waives, releases and discharges the Indemnitees from and against any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, now existing or occurring after the Closing Date, and regardless of whether caused by or within the control of the Developer, based upon, arising out of, or related to: (a) Developer's failure to perform the Environmental Remediation Work (if applicable); (b) any environmental contamination, pollution or hazards associated with all or any portion of the Property or any improvements, facilities or operations located or formerly located thereon, including, without limitation, the presence or suspected presence of Hazardous Substances in, on, under or about the Property, or the escape, seepage, leakage, spillage, release, emission, discharge, generation, transportation, treatment, storage or disposal of Hazardous Substances associated with all or any portion of the Property, or threatened release, emission or discharge of Hazardous Substances from all or any portion of the Property; (c) the structural, physical or environmental condition of the Property; and (d) any violation of, compliance with, enforcement of or liability under

any Environmental Laws, including, without limitation, any Losses arising under CERCLA, and (e) any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon (collectively, "**Released Claims**"). Furthermore, the Developer shall defend, indemnify, and hold the Indemnitees harmless from and against any and all Losses which may be made or asserted by any third parties arising out of or in any way connected with, directly or indirectly, any of the Released Claims.

11.05 Release Runs with the Land. The covenant of release in **Section 11.04** shall run with the Property, and shall be binding upon all successors and assigns of the Developer with respect to the Property, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity owning, leasing, occupying, using or possessing any portion of the Property under or through the Developer following the date of the Deed. The Developer acknowledges and agrees that the foregoing covenant of release constitutes a material inducement to the City to enter into this Agreement, and that, but for such release, the City would not have agreed to convey the Property to MHL. It is expressly agreed and understood by and between the Developer and the City that, should any future obligation of the Developer, or its successors or assigns, arise or be alleged to arise in connection with any environmental, soil or other condition of the Property, neither the Developer, nor its successors or assigns, will assert that those obligations must be satisfied in whole or in part by the City because **Section 11.04** contains a full, complete and final release of all such claims.

11.06 Survival. This **Section 11** shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

SECTION 12. INSURANCE

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

(a) Prior to execution and delivery of this Agreement.

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) All Risk Property

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

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

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) Automobile Liability (Primary and Umbrella)

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

(iv) Railroad Protective Liability

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

(v) All Risk /Builders Risk

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

(vi) Professional Liability

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

(vii) Valuable Papers

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

(viii) Contractors Pollution Liability

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

(c) Post Construction:

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

(d) Other Requirements:

The Developer must furnish the City of Chicago, Department of Planning and Development, Development Support Services, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance

does not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate agreement until proper evidence of insurance is provided.

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

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

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

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

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

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

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

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

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

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

SECTION 13. INDEMNIFICATION

13.01 General Indemnity. Developer agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "**Indemnitee**," and collectively the "**Indemnitees**") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnities

shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner relating or arising out of:

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

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

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

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

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

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

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

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

SECTION 15. DEFAULT AND REMEDIES

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

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

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

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

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company, or the making or any attempt to make any levy, seizure or attachment thereof;

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

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

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

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

(i) the dissolution of the Developer or the death of any natural person who owns a material interest in the Developer;

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not

dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor);or

(k) prior to the issuance of the Certificate, the sale or transfer of a majority of the ownership interests of the Developer without the prior written consent of the City; except for transfers of limited partnership interests in 901 West made in accordance with its partnership agreement, and transfers of the general partner interests in 901 West to a limited partner made in accordance with its partnership agreement or the removal of the general partner in accordance with the 901 West partnership agreement.

For purposes of **Sections 15.01(i)** and **15.01(j)** hereof, a person with a material interest in the Developer shall be one owning in excess of ten (10%) of 901 West's partnership interests.

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements and suspend disbursement of City Funds. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein.

15.03 Curative Period. In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured; provided, further, notwithstanding anything to the contrary contained herein, the City hereby agrees that any cure of and default made or tendered by one of 901 West's partners shall be deemed to be a cure by the Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

15.04 Right to Cure by Lender and Limited Partner. In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in termination of this Agreement and all related agreements, or the suspension, cancellation or reduction of the amount of City Funds disbursed hereunder, the City shall prior to exercising such right or remedy, send notice of such intended exercise to the Lender and the limited partner of 901 West (the "Limited Partner") pursuant to, and at the address set forth in, Section 17 hereof. The Lender and the Limited Partner shall have the right (but not the obligation) to cure such Event of Default as follows:

(a) if the event of Default is a monetary default, the Lender may cure such default within 30 days after the later of: (i) the expiration of the cure period, if any, granted to the

Developer with respect to such monetary default; or (ii) receipt by the Lender or Limited Partner, as applicable, of such notice from the City; and

(b) if any Event of Default is of a non-monetary nature, the Lender or Limited Partner shall have the right to cure such default within 30 days after the later of: (i) the expiration of the cure period, if any, granted to the Developer with respect to such non-monetary default; or (ii) receipt by the Lender or Limited Partner, as applicable, of such notice from the City; and

(c) Notwithstanding the provisions of **Section 15.04(b)** hereof, if such non-monetary default is an Event of Default set forth in **Section 15.01(e), (f), (g), (h), (i)** or **(j)** hereof or Event of Default by the Developer of a nature so as not reasonably being capable of being cured within such 30 day period (each such default being a "Personal Developer Default"), the Lender or Limited Partner, as applicable, shall provide written notice to the City within 30 days of receipt of notice of such Personal Developer Default stating that it shall cure such Personal Developer Default by the assignment of all of the Developer's rights and interests in this Agreement to the Lender or Limited Partner, as applicable, or any other party agreed to in writing by both the Lender or Limited Partner, as applicable, and the City. Upon receipt by the City of such notice from the Lender or Limited Partner, the cure period shall be extended for such reasonable period of time as may be necessary to complete such assignment and assumption of Developer's rights hereunder; provided, however, that no payment of City Funds shall occur until such time as such Personal Developer Default is cured.

SECTION 16. MORTGAGING OF THE PROJECT

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

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

(b) In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction

therewith accepts an assignment of the Developer's interest hereunder in accordance with **Section 18.15** hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of the Developer hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, in which case the Developer shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Prior to the issuance by the City to the Developer of a Certificate pursuant to **Section 7** hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD.

SECTION 17. NOTICE

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

If to the City:

City of Chicago
Department of Planning and Development
121 North LaSalle Street, Room 1000
Chicago, IL 60602
Attention: Commissioner

With Copies To:

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

If to the Developer:

901 West 63rd Limited Partnership
c/o Mercy Housing Lakefront
247 South State Street
Chicago, Illinois 60604
Attention: Executive Director,
Englewood Apartment NFP

with a copy to:

Applegate & Thorne-Thomsen, P.C.
322 South Green Street, Suite 400
Chicago, Illinois 60607
Attention: Ben Applegate, Esq.

Any notice from the City indicating that Developer is in default of any of the terms of this Agreement and/or that the City intends to terminate this Agreement for any reason also shall be sent to the following entities:

Developer's Lender
U.S. Bank National Association
209 South LaSalle Street
Suite 210
Chicago, Illinois 60604
Attn: Katie Holden

Lender's Counsel
Dykema Gossett PLLC
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Derek L. Cottier, Esq.

Limited Partner
U.S. Bancorp Community Investment Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn: Director of Asset Management

Limited Partner's Counsel
Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
Chicago, Illinois 60606
Attn: Caryn L. Chalmers

both, or increases any time agreed for performance by the Developer by more than ninety (90) days.

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

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

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

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

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

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

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

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

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

18.11 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances and/or the Bond Ordinance, if any, such ordinance(s) shall prevail and control.

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

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

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

18.15 Assignment. The Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. By executing this Agreement, the Commissioner of DPD hereby consents to the collateral assignment of this Agreement in connection with the Lender Financing. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.18** (Real Estate Provisions) and **8.21** (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

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

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

18.19 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a

copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

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

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

18.22 Business Relationships. The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a **"Business Relationship"** (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a Business Relationship (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

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

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

901 WEST 63RD LIMITED PARTNERSHIP

By: Englewood Apartments, NFP, an Illinois not for profit corporation, its General Partner

By: _____

Name: _____

Its: _____

MERCY HOUSING LAKEFRONT, an Illinois not-for-profit corporation

By: _____

Name: _____

Its: _____

CITY OF CHICAGO

By: _____
Arnold L. Randall,
Commissioner, Department of Planning and Development

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

901 WEST 63RD LIMITED PARTNERSHIP

By: Englewood Apartments, NFP, an Illinois not for profit corporation, its General Partner

By: _____

Name: Cindy Holler

Its: President

MERCY HOUSING LAKEFRONT, an Illinois not-for-profit corporation

By: _____

Name: Cindy Holler

Its: President

CITY OF CHICAGO

By: _____

Arnold L. Randall,
Commissioner, Department of Planning and Development

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Margaret Ann Shultz, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Cindy Holter, personally known to me to be the Pres. of 901 West 63rd Limited Partnership, an Illinois limited partnership ("901 West"), 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 _____ of 901 West, as his/her free and voluntary act of 901 West, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 23rd day of December, 2008.

Margaret Ann Shultz
Notary Public

My Commission Expires_____

(SEAL)

"OFFICIAL SEAL"
Margaret Ann Shultz
Notary Public, State of Illinois
My Commission Exp. 08/02/2009

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Margaret Ann Shultz, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Cindy Hoffer, personally known to me to be the Pres. of Mercy Housing Lakefront, an Illinois not for profit corporation ("MHL"), and the sole and managing member of Englewood Apartments NFP, an Illinois not-for-profit corporation ("Englewood NFP"), the general partner of 901 West 63rd Limited Partnership, an Illinois limited partnership ("901 West"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by the Board of Directors of MHL, as his/her free and voluntary act, as the free and voluntary act of MHL, as the free and voluntary act of Englewood NFP and as the free and voluntary act of 901 West, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 23rd day of December, 2008.

Margaret Ann Shultz
Notary Public

My Commission Expires

"OFFICIAL SEAL"
Margaret Ann Shultz
Notary Public, State of Illinois
My Commission Exp. 08/02/2009

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

GIVEN under my hand and official seal this 23 day of December, 2008.

Dionisia Leal
Notary Public

"OFFICIAL SEAL"
DIONISIA LEAL
NOTARY PUBLIC STATE OF ILLINOIS
My Commission Expires 03/01/2009

My Commission Expires 03/01/2009

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT A

REDEVELOPMENT AREA LEGAL DESCRIPTION

Lots 22, 23, and 24 in Block 2, Lots 6 to 21, both inclusive, 25 to 37, both inclusive, in Block 1 in Crocker's Resubdivision of the south ½ of the west ½ of the southeast ¼ of the southeast ¼ of Section 17, Township 38 North, Range 14 East of the Third Principal Meridian, and all of Lots 1 to 5, both inclusive, in the subdivision of Lots 22, 23, and 24 in Block 1 of Crocker's subdivision aforesaid and those parts of Block 7 and 8 lying southerly of the southerly line and said southerly line extended of Lyon's Subdivision of Lots 5 and 6 in Crocker's Subdivision of the east part of the southeast ¼ of the southeast ¼ of Section 17 aforesaid and all of Lots 1 to 52, both inclusive, in Ehrler and Hessert's of the north 5 1/3 acres of the South 9 1/2 acres of the southeast ¼ of the southeast ¼ of the southeast ¼ of the southeast ¼ of Section 17 aforesaid and Lots 1 to 20, both inclusive, in Block 1 in the subdivision of the south 4 1/6 acres of the southeast ¼ of the southeast ¼ of the southeast ¼ of Section 17, aforesaid and Lots 1 to 6, both inclusive, Lot 7 (except the south 50 feet thereof) in County Clerk's Division of Block 2 in subdivision of the south 4 1/6 acres aforesaid and Lot A in consolidation of the south 50 feet of Lot 7 together with the 12-foot strip of land designated as alley lying south of and adjoining said lot in County Clerk's Division aforesaid and Lot 31 (except that part thereof taken for South Halsted Parkway) and all of Lots 32 to 46 both inclusive in Listers subdivision of the west 3/5 of the south ½ of the north ½ of the southwest ¼ of the southwest ¼ of Section 16, Township 38 North. Range 14 East of the Third Principal Meridian, all of Lots 7 to 13, both inclusive in Block 2, Lots 1 to 10, both inclusive, in Block 3 the west ½ of Lot 3 and all of Lots 4 to 38, both inclusive, in Block 4, all of Lots 1 to 46 both inclusive in Block 5, Lots 1 to 20, both inclusive in Block 6, Lots 1 to 20, both inclusive in Block 7, Lot 1 (except part taken for South Wallace Street) and all of Lots 2 to 9, both inclusive and Lot 10 (except part taken for South Wallace Street) in Block 8 in Hoyt, Canfield and Matteson's Subdivision of the south ½ of southwest ¼ of the southwest ¼ of Section 16 aforesaid and Lots 1 to 10, both inclusive in Block 2, Lots 1 to 10, both inclusive in Block 3, and Lots 1 to 10, both inclusive in Block 4 in Lucy M. Green Addition to Chicago in Section 20, Township 38 North, Range 14 East of the Third Principal Meridian together with all vacated public streets and alleys and all public streets and alleys within, adjoining and accruing to all of aforesaid lots and blocks, and being that part of the east ½ of the southeast ¼ of Section 17, Township 38 North, Range 14 East of the Third Principal Meridian, and the east ½ of the northeast ¼ of Section 20, Township 38 North, Range 14 East of the Third Principal Meridian, bounded and particularly described as follows: commencing at the southwest corner of Lot 24 in Block 2 in Crocker's Resubdivision of the south ½ of the west ½ of the southeast ¼ of the southeast ¼ of Section 17 aforesaid; thence north along the west line of Lots 21 to 24 of said Block 2 in said Crocker's Resubdivision to the northwest corner of said Lot 21; thence east along the north line, and said north line extended east to the west line of Block 1 in said Crocker's Resubdivision; thence north along said west line to the northwest corner of Lot 37 in said Block 1; thence east along the north line and said north line extended east of said Lot 37 to the east line of a north and south 16-foot public alley in said Block 1; thence north along said east line to the northwest corner of Lot 6 in said Block 1; thence east along the north line, and said north line extended east, to the west line of Lot 49 in Ehrler and Hessert's Subdivision aforesaid; thence north along the west line and said west line extended north of Lots 49 to 52, both inclusive, in said Ehrler and Hessert's Subdivision to a point in the northerly line of West 63rd Parkway; thence northeasterly along the said northerly line of West 63rd Parkway to the north line of Lot 7 in Crocker's Subdivision of the east part of the southeast ¼ of the southeast ¼ of Section 17, aforesaid; thence east along the north line and said north line extended east of said Lot 7 to the east line of South Halsted Street; thence south along the east line of said South Halsted Street to a point 8.49 feet north of the southwest corner of Lot 31 in Lister's Subdivision aforesaid; thence northeasterly 14.14 feet to a line 18.06 feet north of the

south line of said Lot 31; thence westerly along said last described line and said line extended east to the west line of Lot 35 in said Lister's Subdivision; thence north along said west line to the northwest corner of said Lot 35; thence east along the north line of Lots 35 to 46, both level, in said Lister's Subdivision to the northeast corner of said Lot 46; thence south along the east line, and said east line extended south of said Lot 46 to the north line of Block 2 in Hoyt, Canfield and Matteson Subdivision aforesaid; thence east along said north line to the northeast corner of Lot 7 in said Block 2; thence south along the east line of said Lot 7 and the east line and the east line extended south of Lot 38 in Block 4 of said Hoyt, Canfield and Matteson subdivision to the south line of an east and west 16-foot alley in said Block 4; thence east along said south line to the northeast corner of the west ½ of Lot 3 in said Block 4; thence south along the east line of said west ½ of Lot 3 and said east line extended south to the south line West Englewood Avenue; thence east along the south line of West Englewood Avenue to the west line of that part of South Wallace Street dedicated by instrument recorded June 17, 1930 as Document No. 10684217 (being the east line of the west 6 feet of Lot 1 in Block 8 in Hoyt, Canfield and Matteson Subdivision aforesaid); thence south along said west line, and said west line extended south of South Wallace Avenue to the center line of West 63rd Street; thence West along said center line of West 63rd Street to the west line, extended north, of South Green Street (being the east line extended north of Lot 1 in Block 2 in Lucy M. Green Addition to Chicago aforesaid); thence south along the east line extended north and the east line of said Lot 1 to the southeast corner of said Lot 1 (said southeast corner being a point in the north line of a 16-foot east and west public alley); thence west along said north line to the west line, extended north of north and south 16-foot public alley in said Block 2; thence South along said West line to the South line of vacated 16-foot east and west alley; thence west along said south line to the east line of South Peoria Street; thence north along said east line to the north line of said vacant east and west 16-foot alley; thence west along said north line extended west to the west line of South Peoria Drive (said point being the southeast corner of Lot 1, Block 3, said Lucy M. Green Addition to Chicago); thence west along the south line of Lots 1 to 10 in said Block 3 (said south line being the north line of east and west 16-foot public alley) and along the north line of said 16-foot alley extended west to the west line of South Sangamon Street; said point being the southeast corner of Lot 1, Block 4 in said Lucy M. Green Addition to Chicago; thence west along the south line of Lots 1 to 10 in said Block 4 (said south line being the north line of east and west 16-foot alley), to the east line of South Morgan Street (said point being the southwest corner of Lot 10 in Block 4 aforesaid); thence north along the west line of said Lot 10 to the northwest corner thereof (said northwest corner being a point in the south line of West 63rd Street); thence east along said south line of West 63rd Street to its intersection with the west line, extended south of Lot 24 in Block 2 in Crocker's Resubdivision of the south ½ of the west ½ of the southeast ¼ of the southeast ¼ of Section 17 aforesaid; thence north along said extended line to the point of beginning, Cook County, Illinois.

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT B

PROPERTY LEGAL DESCRIPTION

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

PARCEL 1:

THE WEST 1 47/64 FEET OF LOT 8 AND ALL OF LOTS 9 AND 10 IN BLOCK 3 IN LUCY M. GREEN ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 7 AND 8 (EXCEPT THE WEST 1 47/64 FEET OF SAID LOT 8) IN BLOCK 3 IN THE LUCY M. GREEN ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 3, 4, 5 AND 6 IN BLOCK 3 IN LUCY M. GREEN ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOTS 1 AND 2 IN BLOCK 3 IN LUCY M. GREEN ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS:	901-923 WEST 63rd STREET CHICAGO, ILLINOIS 60621
PERMANENT INDEX NO.	20-20-205-001-0000 20-20-205-002-0000 20-20-205-003-0000 20-20-205-004-0000

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT C

TIF-FUNDED IMPROVEMENTS

Line Item	Cost*
Construction Costs	$2,000,000
Demolition	$172,400
TOTAL	$2,172,400

* Under no circumstances will the maximum amount of City Funds provided to the Developer exceed $2,000,000.

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT D

REDEVELOPMENT PLAN

[Not attached for recording purposes]

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT E

CONSTRUCTION CONTRACT

[Not attached for recording purposes]

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT F

PERMITTED LIENS

1. Liens or encumbrances against the Property:

   Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any: None.

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT G

PROJECT BUDGET

PROJECT FINANCING:

SOURCES OF FUNDS	AMOUNT
Equity Bridge / USBank CIC	$10,750,000
IHDA HOME	$2,000,000
TIF	$2,000,000
IAHTC	$250,750
DOE Green Grant	$200,000
Illinois Clean Energy Foundation Grant	$100,000
Deferred Developer Fee	$640,430
USBank Alternative Energy T. C. Equity	$138,290
USBank CIC Equity	$11,342,916
TOTAL	$16,672,386

PROJECT COSTS:

USE OF FUNDS	AMOUNT
Acquisition	$0
Hard Costs	$13,425,361
Soft Costs	$1,796,567
Developer's Fee	$359,570
Def. Dev. Fee	$640,430
Reserves	$450,458
Total	$16,672,386

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT H

REQUISITION FORM

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

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

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

$_____

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

$_____

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

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

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

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

All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

[Developer]

By:_____
Name
Title:_____

Subscribed and sworn before me this ___ day of _____
_____.

_____
My commission expires:_____

Agreed and accepted:

_____
Name
Title:_____
City of Chicago
Department of Planning and Development

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT I

APPROVED PRIOR EXPENDITURES

None.

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT J

OPINION OF DEVELOPER'S COUNSEL

[Not attached for recording purposes]

ENGLEWOOD APARTMENTS REDEVELOPMENT AGREEMENT

EXHIBIT K

MINIMUM ASSESSED VALUATIONS

[See attached]

Preliminary Estimated Incremental Property Taxes -- Englewood Apartments - Permanent Supportive Housing

Englewood Mall TIF Redevelopment Project Area

City of Chicago, Illinois

TIF Year	Assessment Year	Collection Year	Site 1 - Affordable Apartment Units	Other Land EAV	Existing Improvements EAV	Existing Land and Improvements EAV	Total Estimated EAV	Base EAV [a]	Incremental EAV	Incremental Revenue Collected [b]	Cumulative Revenue Collected [b]
17	2006	2007 *	-	99,428	-	99,428	99,428	64,932	34,496	2,000	2,000
18	2007	2008	-	99,428	-	99,428	99,428	64,932	34,496	2,000	4,000
19	2008	2009	-	99,428	-	99,428	99,428	64,932	34,496	2,000	6,000
20	2009	2010 *	364,474	-	-	-	364,474	64,932	299,542	15,000	21,000
21	2010	2011	1,457,895	-	-	-	1,457,895	64,932	1,392,963	70,000	91,000
22	2011	2012	1,457,895	-	-	-	1,457,895	64,932	1,392,963	70,000	161,000
23	2012	2013	1,569,993	-	-	-	1,569,993	64,932	1,505,061	76,000	237,000
Total										237,000	237,000

* reassessment year

a. Base EAV is the estimated initial Base EAV of the Project Site, situated within Englewood Mall TIF Redevelopment Project Area.

b. The incremental revenue collected shown in the table above is net of the City TIF Administration Cost of 5.0%

c. The Englewood Mall TIF Redevelopment Project Area (was) was adopted in 1989 and will expire no later than December 31, 2013.

d. See Table 1 for detailed redevelopment description and other key assumptions.

Constant Tax Rate	5.302%
Collection Rate	100.0%
City TIF Administration Costs	5.0%
Available to Developer	95.0%

ERS Enterprises
March 17, 2008

Incremental Revenue Estimates

EXHIBIT K

GRANT AGREEMENT

This Grant Agreement, made and entered into as of this 23rd day of December, 2008 (this "Agreement") by and between the City of Chicago (the "City") acting through its Department of Housing ("DOH"), Mercy Housing Lakefront, an Illinois not-for-profit corporation ("MHL"), and 901 West 63RD Limited Partnership, an Illinois limited partnership ("901 West" and sometimes collectively hereinafter referred to with MHL as "Developer").

RECITALS

WHEREAS, the City of Chicago is a home rule unit of government as defined in Article VII, Section 6(a) of the Illinois Constitution; and

WHEREAS, the City, the Illinois Attorney General (the "Attorney General"), and Peoples Energy Corporation and its affiliates ("Peoples Energy") entered into a settlement agreement whereby Peoples Energy agreed to pay the City and the Attorney General, jointly, up to $30,000,000, in installments of up to $5,000,000 annually, for the six years beginning in July 2006 (the "Settlement Payments"); and

WHEREAS, the Settlement Payments are intended for, and conditioned upon, application toward the cost for the design, implementation and administration of programs of conservation and weatherization for low and moderate-income residential dwellings with the goal of reducing energy usage costs; and

WHEREAS, by an ordinance adopted by the City Council of the City on October 4, 2006, and published in the Journal of Proceedings of the City Council for said date at pages 86749 through 86779, inclusive, the City Council appropriated the Settlement Payments and authorized the City to enter into an intergovernmental agreement, by and through the City's Department of the Environment ("DOE"), pursuant to which DOE and the Attorney General will coordinate the expenditure of Settlement Payments and the development of the conservation and weatherization programs; and

WHEREAS, by an ordinance adopted by the City Council of the City on July 30, 2008, and published in the Journal of Proceedings of the City Council for said date at pages 34759 through 34767, inclusive, the City Council approved various programs to be funded with the Settlement Payment due July 2008, including a program to provide grants to affordable housing developers and local homeless shelters for the installation of solar hot water panels and ground source heat pumps to displace the use of natural gas used to heat hot water ("Program"); and

WHEREAS, the mission of Developer includes providing housing for low income individuals and families and supportive, single-unit occupancy housing, where people who were formerly homeless can gain the skills and support they need to stabilize and improve their lives ("Developer's Mission"); and

WHEREAS, the City has determined that a grant to Developer is necessary, essential and appropriate to assist with Developer's Mission; and

WHEREAS, the City desires to provide Developer for its use in fulfilling Developer's Mission a grant in an amount not to exceed Two Hundred Thousand Dollars ($200,000) (the "Grant") to cover expenses of Developer in accordance with the budget described in Exhibit A

attached hereto, including expenses for installation of a geothermal system at a six-story, 99-unit building that provides studio supportive housing to the homeless, disabled and very low-income persons located at 901-923 West 63rd Street, Chicago, Illinois (the "Property"), as further described in Exhibit B hereto (the "Project"); and

WHEREAS, the City has available to it funds from Fund **08-0B05-P212005-9183**, which is an account under the control of DOH containing the Grant funds that have been transferred from an account administered by DOE; and

WHEREAS, under the terms and conditions hereof, the City agrees to make the Grant funds available to MHL, who will then loan the proceeds to 901 West to be used to complete the Project; and

WHEREAS, the City and Developer have among their powers the authority to contract with each other to perform the undertakings described herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated herein by reference and made a part hereof.

SECTION 2. DEFINITIONS

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

"Draft NFR Letter" shall mean a draft comprehensive NFR Letter from the IEPA for the Property based on TACO Tier I residential remediation objectives, as amended or supplemented from time to time.

"Englewood Apartments Redevelopment Agreement" shall mean the Redevelopment Agreement dated as of the date hereof by and between the City and the Developer.

"IEPA" shall mean the Illinois Environmental Protection Agency.

"NFR Letter" shall mean a "No Further Remediation" letter issued by the IEPA pursuant to the SRP and, with respect to any USTs subject to Title 16 of the Illinois Environmental Protection Act, a "No Further Remediation" letter with respect to such USTs pursuant to Title 16, whichever is applicable, as amended or supplemented from time to time.

"**TACO**" shall mean the Tiered Approach to Corrective Action Objectives codified at 35 Ill. Adm. Code Part 742 *et seq.*

"**UST(s)**" shall mean underground storage tank(s) whether or not subject to Title 16 of the Illinois Environmental Protection Act, including without limitation (i) any underground storage

tank as defined in 415 ILCS 5/57.2, (ii) any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes, (iii) any tank used for storing heating oil for consumption on the premises where stored, (iv) any septic tank, (v) any tank that is excluded from the definition in 415 ILCS 5/57.2 based upon the existence of any Hazardous Substance therein, and (vi) any pipes connected to items (i) through (v) above.

SECTION 3. GRANT AND CLOSING DOCUMENTS

Subject to the provisions in this Agreement, the City shall make available to Developer the Grant Funds from Fund No. **08-0B05-P212005-9183.**

Prior to the execution of this Agreement, MHL and 901 West shall deliver to the City completed Economic Disclosure Statements ("EDS").

Prior to the execution of this Agreement, MHL and 901 West shall each deliver to the City, as applicable, a copy of its Articles of Incorporation or Certificate of Limited Partnership 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 all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the City's Corporation Counsel may require; by-laws of the corporation or Limited Partnership Agreement; and such other organizational documentation as the City has requested.

Prior to the execution of this Agreement, Developer shall deliver to the City evidence that the insurance required by Section 11 hereunder has been obtained by Developer and approved by the City.

SECTION 4. COVENANTS AND REPRESENTATIONS

4.1 Developer shall use the Grant funds solely for purposes described in Exhibits A and B.

4.2 Developer shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, including Title 2, Chapter 2-156 of the Municipal Code of Chicago, pertaining to or affecting Developer. Upon the City's request, Developer shall provide evidence satisfactory to the City of such compliance.

4.3 Developer shall at all times perform its work in fulfilling Developer's Mission with the utmost care, skill and diligence in accordance with the applicable standards currently recognized in the community.

4.4 Developer shall maintain and keep in force, at its sole cost and expense, at all times during its existence, insurance in such amounts and of such type as set forth in Section 11 hereof.

4.5 Developer shall comply with all policies issued by the City relating to Illinois not-for-profit corporations and federal tax-exempt entities, as such policies may be modified, amended or supplemented from time to time.

4.6 Developer represents as follows:

A. it is a not-for-profit corporation or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the State of Illinois;

B. it has full power and authority to enter into and perform its obligations under this Agreement and the execution and delivery of this Agreement and the performance of its obligations thereunder have been duly authorized by all requisite corporate action;

C. the execution, delivery and performance by Developer of this Agreement will not violate, as applicable, its by-laws, articles of incorporation, partnership agreement, resolution or any applicable provision of law, or constitute a material breach of, default under, or require any consent under, any agreement, instrument or document to which Developer is a party or by which it is bound;

D. there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting Developer which would materially impair its ability to perform under this Agreement;

E. Developer is not in default with respect to any document related to the borrowing of money to which it is a party or by which it is bound which may materially affect its ability to perform under this Agreement; and

F. 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 List, the Unverified List, the Entity List and the Debarred List. For the purposes of this paragraph "Affiliate," when used to indicate a relationship with a specified person or entity, shall mean a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

SECTION 5. TERM

Notwithstanding anything to the contrary, the Grant being provided under this Agreement is subject to the appropriation and availability of City funds. The term of this Agreement shall be the same term as the Englewood Apartments Redevelopment Agreement.

SECTION 6. FINANCIAL REPORTING

Developer will provide as soon as available, and in any event within 180 days after the close of Developer's fiscal year, its audited financial statements prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years and consisting of a balance sheet as of the close of such period and statements of activities and

cash flows for the period then ended, and accompanying notes to the financial statements. The audited financial statements will separately identify the Grant funds provided by the City to Developer.

SECTION 7. DISBURSEMENTS

In order to be eligible for disbursement of any Grant funds pursuant to this Agreement, (a) Developer must have satisfied all it duties, obligations and liabilities regarding satisfaction of the environmental condition of the Property as set forth in Section 11 of the Englewood Apartments Redevelopment Agreement at the time the Grant funds are requested; (b) Developer is in compliance with all other terms, conditions and requirements contained in the Englewood Apartments Redevelopment Agreement at the time the Grant funds are requested; (c) Developer must be in compliance with all terms, conditions and requirements contained in this Agreement at the time the Grant funds are requested; and (d) Developer must have received the Draft NFR Letter for the Property (or a determination by DOE that enrolling the Property in the IEPA SRP Program is not necessary). These conditions shall be collectively defined as the "Grant Conditions." Developer acknowledges and agrees that (a) the City's obligation to pay Grant funds is contingent upon the fulfillment of the Grant Conditions and (ii) in no event shall Grant funds paid to Developer exceed Two Hundred Thousand Dollars ($200,000). If the Grant Conditions have been satisfied, then the Grant funds in a maximum amount of Two Hundred Thousand Dollars ($200,000) shall be paid upon receipt of the Draft NFR Letter. All Grant funds shall be used solely to pay for or reimburse Developer for the cost of the installation of a geothermal system at the Property. If the Grant Conditions are not satisfied, then the amount of Grant funds to be paid to Developer shall be zero ($0).

SECTION 8. INDEMNIFICATION

Developer agrees to indemnify, defend and hold the City, its officials, agents and employees harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' and accountants' fees and court costs) suffered or incurred by any such party arising from or in connection with this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

SECTION 9. DEFAULT AND REMEDIES

9.1 In the event Developer fails to perform, keep or observe any of its covenants, conditions, promises, agreements or obligations under this Agreement, the Englewood Apartments Redevelopment Agreement, or the Economic Disclosure Statements and Affidavits dated as of the date hereof (which Developer provided to the City in connection with this Agreement), and the same is not cured as described in Section 9.2 hereof, the City may terminate this Agreement and Developer shall repay promptly any amounts received pursuant to this Agreement.

9.2 Prior to termination, the City shall give its notice of intent to terminate 30 days prior to termination at the addresses specified in Section 12 hereof, and shall state the nature of the default. In the event Developer does not cure such default within the 30-day notice period, such termination shall become effective at the end of such period; provided, however, with respect to those defaults which are not capable of being cured within such 30-day period, Developer shall not be deemed to have committed such default 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.

9.3 In the event that an event of default occurs under this Agreement that has not been cured in accordance with Section 9.2, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in termination of this Agreement, or the suspension, cancellation or reduction of the amount of Grant funds disbursed hereunder, the City shall prior to exercising such right or remedy, send notice of such intended exercise to the Developer's lender, limited partner (US Bancorp Community Investment Corporation) and their counsel pursuant to, and at the addresses set forth in, Section 12 hereof. The lender and limited partner shall have the right (but not the obligation) to cure such default within 30 days after the later of: (i) the expiration of the cure period, if any, granted to the Developer with respect to such default; or (ii) receipt by the lender or limited partner of such notice from the City; **provided that** if such default is of a nature so as not reasonably being capable of being cured within such 30 day period (each such default being a "Personal Developer Default"), the lender or limited partner, as applicable, shall provide written notice to the City within 30 days of receipt of notice of such Personal Developer Default stating that it shall cure such Personal Developer Default by the assignment of all of the Developer's rights and interests in this Agreement to the lender, limited partner, or any other party agreed to in writing by both the lender or limited partner, as applicable, and the City. Upon receipt by the City of such notice from the lender or limited partner, as applicable, the cure period shall be extended for such reasonable period of time as may be necessary to complete such assignment and assumption of Developer's rights hereunder; **provided further, however,** that no payment of City Funds shall occur until such time as such Personal Developer Default is cured.

9.4 The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.

SECTION 10. NO BUSINESS RELATIONSHIP WITH CITY ELECTED OFFICIALS

Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a Business Relationship (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

SECTION 11. INSURANCE

Developer shall provide and maintain or cause to be provided at Developer's own expense during the term of the Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

11.1 Insurance to Be Provided

A. Workers Compensation and Employers Liability

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

B. Commercial General Liability (Primary and Umbrella)

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

C. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, MHL shall provide Automobile Liability Insurance with limits of not less than $1,000,000 per occurrence for bodily injury and property damage.

D. Professional Liability

When any professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than $500,000. Coverage shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

E. Directors and Officers Liability

Directors and Officers Liability Insurance must be maintained in connection with this Agreement with limits of not less than $1,000,000. Coverage must include any actual or alleged act, error or omission by directors or officers while acting in their individual or collective capacities. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede commencement of services by MHL under this Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of 2 years.

F. Crime

Crime Insurance or equivalent covering all persons handling funds under this Agreement, against loss by dishonesty, robbery, burglary, theft, destruction, or disappearance, computer fraud, credit card forgery, and other related crime risks with limits of not less than $100,000.

G. Valuable Papers

When any media, data, financial records, books and other documents are produced or used under this Agreement, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

11.2 Additional Requirements

Developer will furnish the City of Chicago, Department of Environment, 30 North LaSalle Street, Room 2500, Chicago, IL 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Developer shall submit evidence of insurance on the City of Chicago Insurance Certificate Form or equivalent prior to Agreement award. 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 shall not be deemed to be a waiver by the City. Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

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

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by Developer.

Developer agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

Developer expressly understands and agrees that any coverages and limits furnished by Developer shall in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.

Developer expressly understands and agrees that any insurance or self insurance programs maintained by the City shall not contribute with insurance provided by Developer under the Agreement.

The required insurance shall 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.

Developer shall require all subcontractors to provide the insurance required herein or Developer may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of Developer unless otherwise specified herein.

If Developer or subcontractor desire additional coverages, Developer and each subcontractor shall be responsible for the acquisition and cost of such additional protection.

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

SECTION 12. NOTICES

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, telecopy of facsimile (FAX) machine; (c) overnight courier; or (d) registered or certified first class mail, return receipt requested.

IF TO THE CITY:

City of Chicago
Department of Housing
33 North LaSalle Street, 2d Floor
Chicago, Illinois 60602
Attention: Commissioner
Fax No. (312) 742-1396

WITH COPY TO:

City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Deputy Corporation Counsel
Finance and Economic Development Division
Fax No. (312) 744-8538

IF TO DEVELOPER:

901 West 63rd Limited Partnership
c/o Mercy Housing Lakefront
247 South State Street
Chicago, Illinois 60604
Attention: Executive Director,
Englewood Apartment NFP

WITH COPY TO:

Applegate & Thorne-Thomsen, P.C.
322 South Green Street, Suite 400
Chicago, Illinois 60607
Attention: Ben Applegate, Esq.

Any notice from the City indicating that Developer is in default of any of the terms of this Agreement and/or that the City intends to terminate this Agreement for any reason also shall be sent to the following entities:

Developer's Lender
U.S. Bank National Association
209 South LaSalle Street
Suite 210
Chicago, Illinois 60604
Attn: Katie Holden

Lender's Counsel
Dykema Gossett PLLC
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Derek L. Cottier, Esq.

Limited Partner
U.S. Bancorp Community Investment Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn: Director of Asset Management

Limited Partner's Counsel
Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
Chicago, Illinois 60606
Attn: Caryn L. Chalmers

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

SECTION 13. MODIFICATION

This Agreement may not be altered, modified or amended except by a written instrument signed by all the parties hereto.

SECTION 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and Developer and supersedes all prior agreements, negotiation, and discussion between them.

SECTION 15. WAIVER

Waiver by the City with respect to breach of this Agreement shall not be considered or treated as a waiver of the rights of the City with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City in writing.

SECTION 16. DISCLAIMER

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

SECTION 17. HEADINGS

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

SECTION 18. COUNTERPARTS

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

SECTION 19. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from this Agreement to the extent of such invalidity or unenforceability, and the remainder hereof will not be affected thereby, each of the provisions hereof being severable in any such instance.

SECTION 20. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois.

SECTION 21. NON-LIABILITY OF OFFICIALS

No official, employee or agent of the City shall be charged personally by Developer or by an assignee or subcontractor, with any liability or expenses of defense or be held personally liable under any term or provision of this Agreement because of their execution or attempted execution or because of any breach hereof.

SECTION 22. ASSIGNMENT

This Agreement, or any portion thereof, shall not be assigned by Developer without the prior written consent of the City. By executing this Agreement, the Commissioner of DOH hereby consents to the collateral assignment of this Agreement in connection with the Lender Financing described and defined in the Englewood Apartments Redevelopment Agreement. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement for the term of

this Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

[*The remainder of this page is intentionally left blank*]

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

CITY OF CHICAGO

Ellen Sahli
Commissioner
Department of Housing

901 WEST 63RD LIMITED PARTNERSHIP

By: Englewood Apartments, NFP, an Illinois not for profit corporation, its General Partner

By: _____

Its: _____

MERCY HOUSING LAKEFRONT, an Illinois not-for-profit corporation

By: _____

Its: _____

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

CITY OF CHICAGO

_____

Ellen Sahli
Commissioner
Department of Housing

901 WEST 63RD LIMITED PARTNERSHIP

By: Englewood Apartments, NFP, an Illinois not for profit corporation, its General Partner

By: _____

Its: President

MERCY HOUSING LAKEFRONT, an Illinois not-for-profit corporation

By: _____

Its: President

EXHIBIT A

BUDGET*

Installation of Hybrid Geothermal / backup boiler and cooling tower	$1,685,000
Geothermal well-field	$385,000
Total Amount	**$2,070,000**

* In no event shall the City's Grant toward these Project costs exceed $200,000.

EXHIBIT B

Grant Funded Activities

Grant funds will be used for the costs associated with the installation of a geothermal system at a six-story, 99-unit building that provides studio supportive housing to the homeless, disabled and very low-income persons located at 901-923 West 63rd Street, Chicago, Illinois. The geothermal HVAC system installed at the project will be a hybrid system which will utilize a standard backup boiler system and cooling tower used only in extreme temperature times. Twenty-five wells will be installed on site to support the geothermal HVAC system.

Developer shall also allow for two in-process tours of the installation to developers and other green building stakeholders and allow for up to two monthly tours of the finished building to showcase its green technology innovations. In addition, Developer shall track the benefits of the geothermal system through the installation of a "thru-put meter" and estimates of the annual natural gas displaced as a result of its installation.

MHL will receive the Grant funds from the City and then loan the proceeds to 901 West.