

CHICAGO P.O. ASSOCIATES, L.L.C.
REDEVELOPMENT AGREEMENT

BY AND ~~BETWEEN~~ AMONG

THE CITY OF CHICAGO

AND

CHICAGO P.O. ASSOCIATES, L.L.C.

AND

CHICAGO P.O. ASSOCIATES, INC.

This agreement was prepared by
and after recording return to.
Scott D. Fehlan, Esq.
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121 North LaSalle Street, Room 600
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LIST OF EXHIBITS

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Exhibit B	*Property
Exhibit C	*TIF-Funded Improvements
Exhibit D	Redevelopment Plan
Exhibit E	Construction Contract
Exhibit F	Escrow Agreement
Exhibit G	*Permitted Liens
Exhibit H-1	*Project Budget
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Exhibit L	Requisition Form
Exhibit M-1	*Form of Base Building Note
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Exhibit Q	*Site Plan
Exhibit R	*Affordable For Sale Unit Price Schedule
Exhibit S	*Form of Recapture Mortgage
Exhibit T	*Description of Unit Types/Locations

(An asterisk(*) indicates which exhibits are to be recorded.)

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

CHICAGO P.O. ASSOCIATES, L.L.C. REDEVELOPMENT AGREEMENT

This Chicago P.O. Associates, L.L.C. Redevelopment Agreement (this "**Agreement**") is made as of this _____ day of _____, 20__, by and ~~between~~**among** the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), ~~and~~ Chicago P.O. Associates, L.L.C., a Delaware limited liability company (the "**and Chicago P.O. Associates, Inc., a(n) _____ corporation (jointly and severally, each, individually, and also, as applicable, jointly and severally, the "Developer")**").

RECITALS

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

B. Statutory Authority: The City is authorized under the provisions of the **Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq.**, as amended from time

to time (the "Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.

C. **City Council Authority:** To induce redevelopment pursuant to the Act, the City Council of the City (the "City Council") adopted the following ordinances on November 12, 1998: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Canal/Congress Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Canal/Congress 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 Canal/Congress 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 Developer intends to purchase or has purchased (the "Acquisition") certain property located within the Redevelopment Area located at 401-439 West Van Buren Street, Chicago, Illinois 60607 and legally described on Exhibit B hereto (the "Property"), ~~and, within~~ and is currently the site of the Old Chicago Post Office facility which has been vacant since 1998. Within the time frames set forth in Section 3.01 hereof, the Developer shall commence and complete redevelopment of the Old Main Post Office building as a mixed-use project consisting of approximately 300 housing units, approximately ~~450,000~~480,000 square feet of office space, ~~236~~ hotel rooms, ~~75,000~~ square feet of and ancillary retail space, an approximately 225,000 square foot hotel and 825 parking spaces as required by the Planned Development (the "Facility") thereon. The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project" and will in all material respects conform to the Site Plan attached hereto as Exhibit Q; provided, however, the Components (as hereinafter defined) may change, it being agreed and acknowledged that any "material change" as defined in Section 3.04 shall be subject to DPD's reasonable approval. The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement. It is anticipated that the Project will be developed in four phases (each, a "Component"), as described below.

Phase 1: The first phase of the Project (the "Base Building PhaseComponent"), will consist of (a) base building and demolition work which is essential to the redevelopment of the siteProperty and the construction of shared facilities such as parking, truck dock and entrances, (b) abatement and interior demolition throughout the entire Project, (c) structural reinforcement necessary for the removal of the existing center section of the existing building located on the Property, (d) structural demolition and installation of a new exterior wall surrounding the proposed roof top garden area, (e) construction of the Project's 825 parking spaces (as described above), central truck dock and riverside plaza areas and (f) the mitigation of any hazardous conditions on the exterior walls of the Project.

Phase 2: The second phase of the Project (the "Office PhaseComponent") will consist of (a) construction of approximately ~~450,000~~480,000 square feet of office and ancillary retail

space in the north tower base building designated on the Site Plan and (b) rehabilitation of the shell, lobby, ~~retail areas,~~ elevators, mechanicals, and windows associated with the office and ancillary retail space.

~~Phase 3.~~ The third phase of the Project (the "Residential PhaseComponent") will consist of (a) construction of approximately 300 residential condominium units (of which 20% will be occupied by families whose incomes are at or below 100% of Area Median Income) in approximately 412,000 square feet in the south tower base building designated on the Site Plan and (b) the rehabilitation of the shell, lobby, ~~retail ancillary areas,~~ elevators, mechanicals, and windows associated with the residential units. ~~Of the 300 housing units,~~ 240 will be Market Rate For Sale Units and 60 will be Affordable For Sale Units. up to 20% but no fewer than 5% shall be occupied by families whose incomes are at or below 100% of Area Median Income. In the event that the Developer provides fewer than 20% of the residential condominium units on the Property, the Developer shall pay the sum of \$100,000 to the City's Affordable Housing Opportunity Fund for each such unit that is not provided on the Property. By way of example, in the event the Developer constructs 300 residential condominium units and elects to designate 5% (i.e. 15) of the units as available for sale and occupancy by families whose incomes are at or below 100% of Area Median Income, the Developer would be required to pay the sum of \$4,500,000 to the City's Affordable Housing Opportunity Fund (15% or 45 units not provided on the Property x \$100,000 = \$4,500,000). Exhibit T attached hereto and made a part hereof describes the current location, unit number, bedroom size and accessibility and adaptability features of the housing units, including identifying which units are Market Rate For Sale Units and which are Affordable For Sale Units. Exhibit T may be modified to increase or change the location, unit number, bedroom size and other features of the housing units, subject to the consent of DPD. Upon completion of the Residential PhaseComponent, the Developer shall form ~~the~~ one or more Condominium Association(s), submit the Property comprising the Residential PhaseComponent to the Condominium Act, and record the Condominium Plat, thereby creating a ~~300-unit~~ condominium development that contains approximately 300 dwelling units. Thereafter, the Developer will from time to time convey the condominium units to private purchasers at market rate prices (with respect to Market Rate For Sale Units), and Qualified Households at an Affordable Price, as such terms are defined in Exhibit B to the City Recapture Mortgage (with respect to Affordable For Sale Units).

Phase 4. The fourth phase of the Project (the "Hotel PhaseComponent") will consist of the construction of an approximately ~~236-room~~ 225,000 square foot hotel in the east base building designated on the Site Plan.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago Canal/Congress Tax Increment Financing Program Redevelopment Plan (the "Redevelopment Plan") attached hereto as Exhibit D.

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

City acknowledges that, for tax purposes, Chicago P.O. Associates, Inc. will treat the City's payment to Chicago P.O. Associates, Inc. as a non-shareholder contribution to capital under Section 118 of the Internal Revenue Code of 1986, as amended.

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.

"Actual residents of the City" shall mean persons domiciled within the City.

"Acquisition" 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.

"Affordable For Sale Units" shall mean For Sale Units sold to Qualified Households for an Affordable Price, as such terms are defined in Exhibit B to the City Recapture Mortgage attached hereto as Exhibit S and made a part hereof.

"Available Incremental Taxes" shall mean an amount equal to the Incremental Taxes deposited in the Canal/Congress Redevelopment Project Area TIF Fund attributable to the taxes levied on the Property as adjusted to reflect the amount of the City Fee described in **Section 4.05(c)** hereof. **Available Incremental Taxes shall be used exclusively to re-pay the City Notes.**

"Base Building" shall mean [_____] **Component"** shall have the meaning set forth in the Recitals hereof.

"Base Building Completion Date" shall mean the date on which the City issues a Component Completion Certificate with respect to **for** the Base Building **Component.**

“Base Building Note” shall mean the tax-exempt City of Chicago Tax Increment Allocation Revenue Note, Canal/Congress Redevelopment Project Area (Chicago P.O. Associates, L.L.C. Project), to be in the form attached hereto as Exhibit M-1, in the face amount, and evidencing up to a maximum principal amount of \$4,000,000, subject to reduction in accordance with the applicable provisions of this Agreement, issued by the City to the Developer **in one or more series** on the Base Building Completion Date. The Base Building Note shall bear interest at the City Note Interest Rate and shall ~~not~~ provide for accrued, but unpaid, interest to bear interest at the same annual rate.

“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.~~

“Budget Reduction Amount” shall mean, with respect to each Component ~~the Project~~, the amount, if any, by which the Project Budget for that Component exceeds the Final Project Cost (excluding fees to Developer or its Affiliates) ~~for that Component~~.

“Canal/Congress Area TIF Fund” shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

“Certificate” shall mean any certificate of completion that the City may issue with respect to any phase **Component** of the Project pursuant to **Section 7.01** hereof.

“Certificate of Expenditure” shall mean any Certificate of Expenditure referenced in the City Note pursuant to which the principal amount of the City Note will be established.

“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” shall have the meaning set forth in the Recitals hereof.

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

“City Fee” shall mean the fee described in **Section 4.05(c)** hereof.

“City Funds” shall mean (a) with respect to the Construction Phase Assistance, the funds described in **Section 4.03(b)** hereof and (b) with respect to the City Notes, the funds paid to the Developer pursuant to the City Notes.

“City Notes” shall mean, depending on the context, any one or combination of the Base Building Note, the Hotel Note, the Office Note or the Residential Note.

“City Note Interest Rate” shall mean an annual rate equal to the median value of the 15-year AAA General Obligation Bond rate as published by Bloomberg for the 15 consecutive

Business Days before the applicable City Note is issued plus 225 basis points, but in no event exceeding eight percent (8.00%) per annum.

“City Recapture Mortgage” shall mean the Mortgage, Security Agreement and Recapture Agreement Including Restrictive Covenants to be executed by purchasers of Affordable For Sale Units in favor of the City to secure the conditional repayment of the purchase price subsidy afforded such purchasers, which shall be in substantially the form of Exhibit S.

“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.

“Component(s)” shall mean, depending on the context, any one or combination of the Base Building Component, the Hotel Component, the Office Component or the Residential Component.

“Component Completion Certificate” shall mean any certificate of completion that the City may issue with respect to any ~~phase~~**Component** of the Project pursuant to **Section 7.01** hereof.

“Condominium Act” shall mean the Illinois Condominium Property Act, 765 ILCS 605/1 et seq., as amended.

“Condominium Association” shall mean the ~~_____ Condominium Association, an Illinois not for profit corporation to be hereafter created~~**one or more not for profit condominium associations organized** in accordance with Section 18.1 of the Condominium Act, 765 ILCS 605/18.1, to operate the Condominium Development on behalf of the owners of the **residential** condominium units.

“Condominium Declaration” shall mean the Declaration of Condominium for the _____ **Condominium Association**, including the Bylaws and Rules and Regulations attached as exhibits thereto.

“Condominium Development” shall mean the **residential** condominium development to be constructed pursuant to the Residential **PhaseComponent**.

“Condominium Plat” shall mean the plat to be prepared and recorded in accordance with Sections 5 and 6 of the Condominium Act, 765 ILCS 605/5 and 765 ILCS 605/6 with respect to the formation of the Condominium Development, setting forth the boundaries, dimensions, unit numbers and such other information as may be required under the Condominium Act, as the same may be amended from time to time in accordance with the Condominium Act and 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.

“Construction Phase Assistance” shall have the meaning set forth in **Section 4.03(a)** hereof.

“Corporation Counsel” shall mean the City’s Office of Corporation Counsel.

“Discount Rate” shall mean an annual rate equal to 225 basis points above the median value of the 15-year AAA General Obligation Bond rate as published by Bloomberg for the 15 consecutive Business Days before the later of (a) the date the Developer acquires the Property, or (b) the closing of this Agreement; **provided, however**, that the Discount Rate shall not exceed 8% per annum.

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

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

“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) and **Section 4.03(b)**.

“Escrow” shall mean the construction escrow established pursuant to the Escrow Agreement.

“Escrow Agreement” shall mean, **to the extent required by the Developer's lender**, the Escrow Agreement establishing a construction escrow, to be entered into as of the date hereof by the Title Company (or an affiliate of the Title Company), the Developer and the Developer’s lender(s), substantially in the form of **Exhibit F** attached hereto.

“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 Project Cost shall have the meaning set forth in **Section 7.01** hereof.

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

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

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

Hotel Component shall mean [] **have the meaning set forth in the Recitals hereof.**

Hotel Component Completion Date shall mean the date on which the City issues a Component Completion Certificate with respect to the Hotel Component.

Hotel Note shall mean the tax-exempt City of Chicago Tax Increment Allocation Revenue Note, Canal/Congress Redevelopment Project Area (Chicago P.O. Associates, ~~L.L.C.~~ Project), to be in the form attached hereto as Exhibit M-2, in the face amount, and evidencing up to a maximum principal amount of \$14,000,000, subject to reduction in accordance with the applicable provisions of this Agreement, issued by the City to the Developer **in one or more series** on the Hotel Component Completion Date. The Hotel Note shall bear interest at the City Note Interest Rate and shall not provide for accrued, but unpaid, interest to bear interest at the same annual rate.

Human Rights Ordinance shall have the meaning set forth in **Section 10** hereof.

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

Indemnitees shall have the meaning set forth in **Section 13.01** hereof.

LEED Certification shall mean Certification of the Rehabilitation Project under the Leadership in Energy and Environmental Design (LEED) Green Building Rating System maintained by the U.S. Green Building Council and applicable to [commercial interiors][**to confirm**].

Definition of Hotel

“Lender Financing” shall mean funds borrowed by the Developer from lenders and irrevocably available to pay for Costs of the Project, in the amount set forth in **Section 4.01** hereof.

“Letter of Credit” shall mean the initial irrevocable, direct pay transferable Letter of Credit naming the City as the sole beneficiary in the amount of the Construction Phase Assistance delivered to the City pursuant to **Section 4.03 (b)** hereof which will expire upon the issuance of the second Certificate to be issued, and, unless the context or use indicates another or different meaning or intent, any substitute Letter of Credit delivered to the City, in form and substance satisfactory to the City in its sole and absolute discretion, and any extensions thereof.

“Lock-Out Period” shall have the meaning set forth in **Section 4.03(c)(i)** hereof.

“Market Rate For Sale Units” shall mean For Sale Units that may be sold at the market rate without any income qualification or affordability requirements.

“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 attached hereto as **Exhibit H-2**, as described in **Section 10.03**.

“Municipal Code” shall mean the Municipal Code of the City of Chicago.

~~**“New Markets Tax Credits”** shall mean (i) the net cash proceeds received by the Developer and/or its Affiliates of a direct allocation of New Markets Tax Credits to the Developer, or (ii) the present value of interest rate reductions realized by the Developer and/or its Affiliates in securing a low interest loan from a third party allocation of New Market Tax Credits. For purposes of this calculation, interest rate reductions over the life of the New Markets Tax Credit loan shall be discounted at the Discount Rate to determine the present value.~~

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

“Office Component” shall mean [_____]**have the meaning set forth in the Recitals hereof.**

“Office Component Completion Date” shall mean the date on which the City issues a Component Completion Certificate with respect to the Office Component.

“Office Note” shall mean the tax-exempt City of Chicago Tax Increment Allocation Revenue Note, Canal/Congress Redevelopment Project Area (Chicago P.O. Associates, L.L.C. Project), to be in the form attached hereto as **Exhibit M-3**, in the face amount, and evidencing up

to a maximum principal amount of \$16,000,000, subject to reduction in accordance with the applicable provisions of this Agreement, issued by the City to the Developer in one or more series on the Office Component Completion Date. The Office Note shall bear interest at the City Note Interest Rate and shall not provide for accrued, but unpaid, interest to bear interest at the same annual rate.

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

“Permitted Mortgage” shall have the meaning set forth in Section 16 hereof.

“Planned Development” shall mean the Business Planned Development (BPD# _____) that was adopted by City Council on _____.

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

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

“Project” shall have the meaning set forth in the Recitals hereof.

“Project Budget” shall mean the budget attached hereto as Exhibit H-1, showing the total cost of the Project by Component and by line item, furnished by the Developer to DPD, in accordance with Section 3.03 hereof.

“Project Reconfiguration Adjustment” shall have the meaning set forth in Section 4.03(c)(v) hereof.

“Property” shall have the meaning set forth in the Recitals hereof.

“Qualified Investor” shall mean a qualified institutional buyer (“QIB”) or a registered investment company.

“Redevelopment Area” shall have the meaning set forth in the Recitals hereof.

“Redevelopment Plan” shall have the meaning set forth in the Recitals hereof.

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

“Requisition Form” shall mean the document, in the form attached hereto as Exhibit L, to be delivered by the Developer to DPD pursuant to Section 4.04 of this Agreement.

“Residential Component” shall mean _____ **have the meaning set for in the Recitals hereof.**

“Residential Component Completion Date” shall mean the date on which the City issues a Component Completion Certificate with respect to the Residential Component.

“Residential Note” shall mean the tax-exempt City of Chicago Tax Increment Allocation Revenue Note, Canal/Congress Redevelopment Project Area (Chicago P.O. Associates, L.L.C. Project), to be in the form attached hereto as Exhibit M-4, in the face amount, and evidencing up to a maximum principal amount of \$12,000,000, subject to reduction in accordance with the applicable provisions of this Agreement, issued by the City to the Developer **in one or more series** on the Residential Component Completion Date. The Residential Note shall bear interest at the City Note Interest Rate and shall ~~not~~ provide for accrued, but unpaid, interest to bear interest at the same annual rate.

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

“Survey” shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM urban survey of the Property dated within 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(s) providing Lender Financing).

“Tax Credit Amount” shall mean the greater of (a) the amount by which the total value of all Rehabilitation Tax Credit-related payments to the Developer and/or its Affiliates less any actual or scheduled payments to the investor and fees and/or soft costs directly incurred by and paid to parties other than the Developer or its Affiliates as a result of the tax credits exceeds \$12 million; (b) ~~the amount by which the New Markets Tax Credits exceeds \$ _____~~ **[to be negotiated by the City and the Developer prior to execution of the Agreement]**; and ~~(and (b))~~ **(b)** the amount by which the total value of all Rehabilitation Tax Credit-related payments to the Developer and/or its Affiliates less any actual or scheduled payments to the investor and fees and/or soft costs directly incurred and paid to parties other than the Developer or its Affiliates as a result of the tax credits is greater than 4% of the aggregate Final Project Cost. **Under either (a) or (b) above, the Tax Credit Amount shall be reduced by the amount the Final Project Cost exceeds the Project Budget.**

“Term of the Agreement” shall mean the period of time commencing on the Closing Date and ending on the date on which the Redevelopment Area is no longer in effect (through and including _____, _____). **December 31, 2022.**

“TIF Adoption Ordinance” shall have the meaning set forth in the Recitals hereof.

~~“**TIF Bonds**” shall have the meaning set forth in the Recitals hereof.~~

~~“**TIF Bond Ordinance**” shall have the meaning set forth in the Recitals hereof.~~

“**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.

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

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

“**Title Company**” shall mean _____.

“**Title 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.

“**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: (i) commence construction **of the Project** no later than _____, _____, the date which is six months after the date the City Council adopted an ordinance authorizing the execution by the City of this Agreement; **Closing Date** and (ii) complete construction and conduct business operations thereof **of the Base Building Component** no later than three years after the earlier of (a) commencement of construction of the Project and (b) _____, _____, the date which is six months after the date the City Council adopted an ordinance authorizing the execution by the City of this Agreement **Closing Date**.

3.02 Scope Drawings and Plans and Specifications. The Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. 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 DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Three Hundred Ten Million Four Hundred Fifty-Three Thousand Two Hundred Fifty-Six Dollars (\$310,453,256). The Developer hereby certifies to the City that (a) the City Funds, together with Lender Financing and Equity described in **Section 4.02** hereof, shall be sufficient to ~~complete~~**pay for the costs of** the Project; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

3.04 Change Orders . ~~All~~**Except as otherwise provided below, all** Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to a material change to **any Component of** the Project must be submitted by the Developer to DPD for DPD's prior written approval. As used in the preceding sentence, a "**material change to any Component of the Project**" means (a) a reduction in the gross or net square footage of the Facility **Component** by more than 10%; (b) a change in the use of the Property to a use other than as described in ~~Recital D~~ **to this Agreement authorized by the Planned Development**; (c) a delay in the **commencement or completion of the Project Base Building Component** by more than 180 days; **unless such delays are occasioned by event(s) of force majeure in accordance with Section 18.17 below. DPD's prior written approval shall not be required** (d) changes to the environmental features of the Facility **any Component** (including the green roof) required under the Planned Development and **Section 8.23**; (e) a ~~reconfigurations~~**reconfiguration** of the Project **Component** causing the various usable square footages of the major components (e.g. residential, hotel, and office) to vary in the aggregate **such Component to decrease** by more than 10 percent from the program as described in ~~Recital D~~**Recital D** to this Agreement; or (f) Change Orders that, in the aggregate, increase the Project Budget **for any such Component** by more than 10%. DPD will attempt to expeditiously review any such Change Order request and approve or disapprove (with a brief written explanation given of any disapproval) such proposed Change Order within thirty (30) days of its receipt thereof. **DPD's failure to respond within said 30-day period shall be deemed an approval of the Change Order Request.** 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 DPD'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.

3.05 DPD Approval. Any approval granted by DPD 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 DPD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

3.06 Other Approvals. Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, 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 DPD'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~~**Following the Closing Date and until issuance of the final Component Completion Certificate, the** Developer shall provide DPD with written (i) quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any delay in the completion of the Project by more than 180 days being considered a Change Order requiring DPD's written approval pursuant to **Section 3.04**), ~~commencing thirty days after the end of the calendar quarter in which this Agreement is executed, and thirty days after the end of each subsequent calendar quarter through and including the date of the final Component Completion Certificate for the Project,~~ and (ii) monthly reports on the Developer's compliance with the City's MBE/WBE utilization, prevailing wage, and City residency requirements as set forth in this Agreement. ~~The~~**Within 60 days of the issuance of the final Component Completion Certificate, the** Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect. ~~An independent agent or~~**DPD agrees that the Project's construction lender's inspecting** architect (other than the Developer's architect) ~~approved by DPD shall be selected to act~~**shall suffice** as the **DPD's** 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 DPD, ~~prior to requests for disbursement for costs related to the Project hereunder.~~

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

3.10 Signs and Public Relations. 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, 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.

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$[310,453,256], to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Sources of Funds	Phase 1 (Base Bldg) Component	Phase 2 (Office) Component	Phase 3 (Hotel) Component	Phase 4 (Residential) Component	Total
Lender Financing	\$12,900,000	\$62,700,000	\$10,800,000	\$76,300,000	\$162,700,000
Cash flow from Operations	1,100,000	8,200,000	14,400,000	12,100,000	35,800,000
Proceeds of anticipated sale of City Notes (subject to Section 4.03)(1)	8,800,000 <u>4,000,000</u>	17,200,000 <u>6,000,000</u>	2,600,000 <u>14,000,000</u>	16,900,000 <u>2,000,000</u>	45,500,000 <u>46,000,000</u>
Cash Equity (subject to Section 4.06)	10,000,000	19,400,000	3,000,000	19,100,000	51,500,000
USPS Payment	9,000,000				9,000,000
Construction Phase Assistance (1)	1,000,000 <u>5,000,000</u>	1,900,000	300,000	1,900,000	5,000,000
Total	<u>\$42,800,000</u>	<u>\$109,300,000</u>	<u>\$31,100,000</u>	<u>\$126,200,000</u>	<u>\$309,500,000</u>

(1) City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. The payment of City Funds,

including the timing of payment, is subject to the terms and conditions of this Agreement, including but not limited to **Section 4.03** and **Section 5** hereof. Net proceeds from the City Notes will be front-funded by debt and equity sources.

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) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. **Exhibit C** sets forth, by line item, the TIF-Funded Improvements for the Project, and the ~~maximum~~**estimated** amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b) and 4.05(d)**), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost. Except for the Construction Phase Assistance, City Funds shall not be paid to the Developer hereunder prior to the issuance of a Certificate.

(b) Construction Phase Assistance. ~~Up to \$5,000,000~~ in City Funds (the “**Construction Phase Assistance**”) will be paid from existing Incremental Taxes, subject to City certification of sufficient costs related to TIF-Funded Improvements. Construction Phase Assistance will be issued, ~~if at all,~~ in a single payment not later than March 1, 2009, ~~provided that up to \$5,000,000 to be derived~~**2009** from Incremental Taxes shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as:

(i) ~~The amount of the Incremental Taxes deposited into the Canal/ Congress TIF Fund shall be sufficient to pay for such costs after certain funding priorities [to be specified] are serviced;~~ and (ii) ~~The~~ **the** Developer shall deposit with the City the Letter of Credit.

The Developer acknowledges and agrees that the City’s obligation to pay Construction Phase Assistance ~~up to a maximum of \$5,000,000~~ is contingent upon the fulfillment of the conditions set forth in parts (i) and (ii) above. 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.

(c) City Notes.

(i) Base Building Note. 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 issue the Base Building Note to the Developer upon the issuance of the **Base Building** Component Completion Certificate ~~with respect to the Base Building.~~ The principal amount of the Base Building Note shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by the Developer in connection

with the Base Building Component and are to be reimbursed by the City through payments of principal and interest on the Base Building Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the Base Building Note shall be an amount not to exceed \$4,000,000; ~~provided, further, that the principal amount of the Base Building Note may be reduced by an amount equal to (i) 75% of the Budget Reduction Amount, if any, (ii) 50% of the Tax Credit Amount, if the Base Building Note is the last City Note to be issued, (iii) 100% of the Project Reconfiguration Adjustment; and (iv) 100% of the amount by which the TIF assistance to the Developer under the Base Building Note would exceed 9.346% of the Final Project Cost with respect to the Base Building Component.~~ 4,000,000. Interest on the Base Building Note will accrue at the City Note Interest Rate from its date of issuance, as more fully described in Exhibit M-1 attached hereto, and will compound annually. The Base Building Note shall be payable from Available Incremental Taxes, provided that no payments shall be made on the Base Building Note until the issuance of the Base Building Component Completion Certificate ~~with respect to the Base Building~~. [Payments of principal and interest on the Base Building Note shall be made in accordance with a debt service schedule attached to the Base Building Note]. The City may not prepay the Base Building Note, without the consent of the Developer or the registered owner of the Base Building Note, as applicable, for a period of five years (the "Lock-Out Period") from the date which is six (6) months following the date of issuance of the applicable Component Completion Certificate. The Developer may sell the Base Building Note at any time after the issuance of the Base Building Component Completion Certificate ~~with respect to the Base Building~~, but only to a Qualified Investor with no view to resale and pursuant to an acceptable investment letter and in a manner and on terms, including debt service schedule, otherwise reasonably acceptable to the City.

(ii) Residential Note. 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 issue the Residential Note to the Developer upon the issuance of the Residential Component Completion Certificate ~~with respect to the Residential Component~~. The principal amount of the Residential Note shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by the Developer in connection with the Residential Component and are to be reimbursed by the City through payments of principal and interest on the Residential Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the Residential Note shall be an amount not to exceed \$12,000,000; provided, further, that the principal amount of the Residential Note may be reduced by an amount equal to (i) any Project Reconfiguration Adjustment applicable to the Residential Component and, (ii) in the event the Residential Note is the last City Note to be issued, (A) 75% of the Budget Reduction Amount, if any, ~~(ii)~~ (B) 50% of the Tax Credit Amount, if the Residential Note is the last City Note to be issued, (iii) 100% of the Project Reconfiguration Adjustment; and ~~(iv)~~ any; and (C) 100% of the amount by which the TIF assistance to the Developer under the Residential Note would exceed 9.509 _____ % of the Final Project Cost with respect to the Residential Component. Project. Interest on the

Residential Note will accrue at the City Note Interest Rate from its date of issuance, as more fully described in Exhibit M-2 attached hereto, and will compound annually. The Residential Note shall be payable from Available Incremental Taxes, provided that no payments shall be made on the Residential Note until the issuance of the Residential Component Completion Certificate ~~with respect to the Residential Component~~. [Payments of principal and interest on the Residential Note shall be made in accordance with a debt service schedule attached to the Residential Note]. The City may not prepay the Residential Note, without the consent of the Developer or the registered owner of the Residential Note, as applicable, during the Lock-Out Period. The Developer may sell the Residential Note at any time after the issuance of the Residential Component Completion Certificate ~~with respect to the Residential Component~~, but only to a Qualified Investor ~~with no view to resale and pursuant to an acceptable investment letter and in a manner and on terms, including debt service schedule, otherwise reasonably acceptable to the City.~~

(iii) Office Note. 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 issue the Office Note to the Developer upon the issuance of the Office Component Completion Certificate ~~with respect to the Office Component~~. The principal amount of the Office Note shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by the Developer in connection with the Office Component Component and are to be reimbursed by the City through payments of principal and interest on the Office Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the Office Note shall be an amount not to exceed \$16,000,000; provided, further, that the principal amount of the Office Note may be reduced by an amount equal to (i) any Project Configuration Adjustment applicable to the Office Component and, (ii) in the event the Office Note is the last City Note to be issued, (A) 75% of the Budget Reduction Amount, if any, (B) 50% of the Tax Credit Amount, if the Office Note is the last City Note to be issued, (iii) 100% of the Project Reconfiguration Adjustment; and (iv) any; and (C) 100% of the amount by which the TIF assistance to the Developer under the Office Note would exceed 14.6386% of the Final Project Cost with respect to the Office Component. Project. Interest on the Office Note will accrue at the City Note Interest Rate from its date of issuance, as more fully described in Exhibit M-3 attached hereto, and will compound annually. The Office Note shall be payable from Available Incremental Taxes, provided that no payments shall be made on Office Note until the issuance of the Office Component Completion Certificate ~~with respect to the Office Component~~. [Payments of principal and interest on the Office Note shall be made in accordance with a debt service schedule attached to the Office Note]. The City may not prepay the Office Note, without the consent of the Developer or the registered owner of the Office Note, as applicable, during the Lock-Out Period. The Developer may sell the Office Note at any time after the issuance of the Office Component Completion Certificate ~~with respect to the Office Component~~, but only to a Qualified Investor ~~with no view to resale and pursuant to an acceptable investment letter and in a manner and on terms, including debt service schedule, otherwise reasonably acceptable to the City.~~

(iv) Hotel Note. 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 issue the Hotel Note to the Developer upon the issuance of the Hotel Component Completion Certificate with respect to the Hotel Component. The principal amount of the Hotel Note shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by the Developer in connection with the ~~Hotel Component~~ Component and are to be reimbursed by the City through payments of principal and interest on the Hotel Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the Hotel Note shall be an amount not to exceed \$14,000,000; provided, further, that the principal amount of the Hotel Note may be reduced by an amount equal to (i) any Project Configuration Adjustment applicable to the Hotel Component and, (ii) in the event the Hotel Note is the last City Note issued, (A) 75% of the Budget Reduction Amount, if any, (iiB) 50% of the Tax Credit Amount, if the Hotel Note is the last City Note to be issued, (iii) 100% of the Project Reconfiguration Adjustment; and (iv) any; and 100% of the amount by which the TIF assistance to the Developer under the Hotel Note would exceed 45.016% of the Final Project Cost with respect to the ~~Hotel Component~~. Interest on the Hotel Note will accrue at the City Note Interest Rate from its date of issuance, as more fully described in Exhibit M-4 attached hereto, and will compound annually. The Hotel Note shall be payable from Available Incremental Taxes, provided that no payments shall be made on Hotel Note until the issuance of the Hotel Component Completion Certificate with respect to the ~~Hotel Component~~. [Payments of principal and interest on the Hotel Note shall be made in accordance with a debt service schedule attached to the Hotel Note]. The City may not prepay the Hotel Note, without the consent of the Developer or the registered owner of the Hotel Note, as applicable, during the Lock-Out Period. The Developer may sell the Hotel Note at any time after the issuance of the Hotel Component Completion Certificate with respect to the ~~Hotel Component~~, but only to a Qualified Investor with no view to resale and pursuant to an acceptable investment letter and in a manner and on terms, including debt service schedule, otherwise reasonably acceptable to the City.

(v) Project Reconfiguration. The parties acknowledge that the amount of City Funds the City has agreed to provide is based on financial and operational assumptions. If, with respect to any Component, the ultimate mix of proposed uses in such Component differs from the description in Recital D to this Agreement by an aggregate amount encompassing more than 10% of the total usable square footage of such Component, and the City has such that a Change Order is required to be approved such change pursuant to in accordance with Section 3.04 (Change Orders) hereof, then prior to issuing a Component Certificate of Completion for such Component, the City will review the potential effects of this reconfiguration on returns. The City's review will take into account factors including actual certified construction costs and pricing and rent information from sales contracts, ~~letters of intent~~, parking fee schedules, leases, and terms and timing of Project financing secured at the time such review. If the proposed changes cause projected overall Internal Rate of Return (IRR) on equity to exceed 18%, the City will reduce the face amount of the next ~~Tax Exempt~~ City Note issued to for the Developer applicable Component. The amount of this reduction (the "Project

Reconfiguration Adjustment”) will be set such that the amount by which the overall projected IRR for the ~~Project~~**applicable Component** exceeds 18% is reduced by 50%. For example: if an increase in the Residential Component square footage ~~caused~~**causes** a projected ~~overall Project IRR~~ on equity of 20% **for the Residential Component**, the principal amount of the Residential Note would be reduced such that the overall projected **IRR for the Residential Component** was reduced to 19%. To the extent that capitalization rates are used to calculate IRR, these rates will be derived from forecasted Chicago regional terminal cap rate data for the closest corresponding product type, as reported in the most recent available edition of Real Estate Research Corporation’s quarterly “Real Estate Report.” If this publication is not usable at the time of calculation, a similar publication may be substituted.

(vi) **Tax Credit Amount.** If the final City Note is issued before the Tax Credit Amount can be calculated, then the Developer shall issue to the City a promissory note in the amount of 50% of the Tax Credit Amount which shall be secured by, at the sole discretion of the City, (a) a junior mortgage in form and substance satisfactory to the City in its sole discretion or (b) an irrevocable, direct pay transferable letter of credit naming the City as the sole beneficiary in the amount of 50% of the Tax Credit Amount. **[Note: This concept is fine, but the whole premise of this provision is that we won’t know the Tax Credit Amount (and therefore the amount of the promissory note).]**

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

<u>Source of City Funds</u>	<u>Maximum Amount</u>
Construction Phase Assistance Incremental Taxes	\$5,000,000
City Notes Available Incremental Taxes and/or _____ TIF Bond Proceeds—	\$46,000,000

~~provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed the lesser of Fifty-One Million Dollars (\$51,000,000) or 16.478% of the actual total Project costs, with such amount to be further reduced by the City Fee; and provided further, that the \$5,000,000 to be derived from Incremental Taxes and the \$46,000,000 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 make payments under the City Notes and allocated by the City for that purpose only so long as:~~

~~(i) The amount of the Incremental Taxes or Available Incremental Taxes, as applicable, deposited into the Canal/Congress TIF Fund shall be sufficient to pay for such costs or to make such payments under the City Notes, as applicable; and~~

~~(ii) The City has been reimbursed from Incremental Taxes or Available Incremental Taxes, as applicable, for the amount previously disbursed by the City for TIF-Funded Improvements. The Developer acknowledges and agrees that the City's obligation to pay for TIF-Funded Improvements up to a maximum of \$51,000,000 is contingent upon the fulfillment of the conditions set forth in parts (i) and (ii) above. 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. On the Closing Date and prior to each October 1 (or such other date as the parties may agree to) thereafter, beginning in ____ and continuing throughout the earlier of (i) the Term of the Agreement or (ii) the date that the Developer has been reimbursed in full under this Agreement, the Developer shall provide DPD with a Requisition Form, along with the documentation described therein. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per calendar year (or as otherwise permitted by DPD). On each December 1 (or such other date as may be acceptable to the parties), beginning in ____ and continuing throughout the Term of the Agreement, the Developer shall meet with DPD at the request of DPD to discuss the Requisition Form(s) previously delivered.

4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

(a) **Prior Expenditures.** Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to 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 the Developer, 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 ~~five~~**three** percent (~~5~~**3**%) 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.

(c) **Allocation Among Line Items.** Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, ~~with transfers~~ **on a Component-by-Component basis.** ~~Transfers~~ of costs and expenses ~~from one line item to another, without the prior written consent of DPD, being prohibited; provided,~~

~~however, that such transfers may be made among line items, within each Component in an amount not to exceed \$25,000~~250,000 or \$100,0001,000,000 in the aggregate, may be made without the prior written consent of DPD.

~~(d) Allocation of Costs With Respect To Sources of Funds.~~

~~(i) Disbursement of City Funds. The Construction Phase Assistance shall be charged to City Funds, to be used to directly pay for, or reimburse the Developer for its previous payment for (out of Equity or Lender Financing) TIF-Funded Improvements.~~

~~(ii) Disbursement of Equity. After the disbursement of the Construction Phase Assistance, each amount paid pursuant to this Agreement, whether for TIF-Funded Improvements or otherwise, shall be charged first to Equity.~~

~~(iii) Disbursement of Lender Financing. After there is no Equity remaining, each amount paid pursuant to this Agreement, whether for TIF-Funded Improvements or otherwise, shall be charged to Lender Financing.~~

~~(iv) Disbursement of City Funds. After there is no Equity or Lender Financing remaining, each amount paid pursuant to this Agreement shall be charged to City Funds, to be used to directly pay for, or reimburse the Developer for its previous payment for (out of Equity or Lender Financing) TIF-Funded Improvements; provided that costs of TIF-Funded Improvements that are to be paid from City Funds derived from (1) Available Incremental Taxes on deposit from time to time in the Canal/Congress Redevelopment Project Area TIF Fund, and/or (2) proceeds of TIF Bonds, if any, shall be payable by the City only to the extent that such funds are available.~~

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; Execution of Certificate of Expenditure. Prior to each disbursement of City ~~Fund~~Funds hereunder or execution of a Certificate of Expenditure by the City, the Developer shall submit 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 or execution by the City of a Certificate of Expenditure 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 or request for execution of a Certificate of Expenditure, that:

(a) the total amount of the disbursement request or request for Certificate of Expenditure represents the actual cost of the Acquisition or the actual amount payable to (or paid to) the

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

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

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

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

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

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

(g) the Project is In Balance. The Project shall be deemed to be in balance (“**In Balance**”) only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. “**Available Project Funds**” as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), ~~cash in an amount~~ funds that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement or execution of a Certificate of Expenditure 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 the deposit with the City of the Letter of Credit as set forth in Section 4.03(b) of this Agreement and the requirements set forth in the ~~Bond Ordinance, if any, the Bonds, if any, the TIF Ordinances~~ and this Agreement.

4.08 Conditional Grant. The Construction Phase Assistance being provided hereunder is being granted on a conditional basis, subject to the Developer’s compliance with the provisions of this Agreement. The City Funds included in the Construction Phase Assistance are subject to being reimbursed as provided in Section 15.02 hereof.

4.09 Cost of Issuance. The Developer shall be responsible for paying all costs relating to the issuance of the City Note, including costs relating to the opinion described in **Section 5.09(b)** hereof.

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 DPD, and DPD 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 DPD, and DPD 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 **necessary to commence construction of the Base Building Component** and has submitted evidence thereof to DPD.

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~~ **commence construction of the Base Building Component and to** 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 the other sources set forth in **Section 4.01**) to ~~complete the Project~~ **commence construction of the Base Building Component**. The Developer has delivered to DPD a copy of the construction escrow agreement entered into by the Developer regarding the Lender Financing. Any **financing** 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 **such as the form set forth in Exhibit hereto**, 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. **The Subordination Agreement may include lender cure rights, standstill provisions and similar intercreditor agreements as may be mutually acceptable to the City and the Lender providing Lender Financing.**

5.05 Acquisition and Title. On the Closing Date, the Developer has furnished the City with a copy of the Title Policy **(or a "marked-up" title commitment or pro-forma) of same** for the Property, ~~eertified~~ **issued** by the Title Company, ~~and~~ showing the Developer **Chicago P.O. Associates L.L.C.** as the named insured. The Title Policy **(or a "marked-up" title commitment or pro-forma) of same** is dated as of the Closing Date and contains only those

title exceptions listed as Permitted Liens on Exhibit G hereto and ~~evidences the recording of~~ identifies this Agreement pursuant to the provisions of ~~Section 8.18~~ hereof as Schedule B exception. The Title Policy also contains such endorsements as shall be reasonably required by Corporation Counsel, ~~including but not limited to an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking)~~ and which shall include 3.0 zoning endorsements, contiguity, location, access and survey. The Developer has provided to DPD, on or prior to the Closing Date, documentation related to the purchase of the Property and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. The Developer, at its own expense, has provided the City with searches under the Developer's name (and the following trade names of the Developer: _____) as follows:

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

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

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

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

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

(b) On the Closing Date, the City has received from _____, special counsel, an opinion regarding the tax-exempt status and enforceability of the City Notes, in form and substance 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(a) hereof.

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

5.12 Documentation. The Developer has provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters, ~~—[and _____] [DPD to confirm whether any other information is needed at closing] to the extent Developer has commenced construction of the Project prior to the Closing Date.~~

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

5.14 Corporate Documents; Economic Disclosure Statement. The Developer has provided a copy of its Articles of Organization 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~~ evidence that the Developer is qualified to do business in the State of Illinois, if not organized in Illinois; a secretary's certificate or similar instrument in such form and substance as the Corporation Counsel may require; operating agreement of the ~~company~~ entity; 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. (a) Except as set forth in Section 6.01(b) below, prior to entering into an agreement with a General Contractor or any subcontractor for construction of any portion of the Project, the Developer shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with, and having an office located in, the City of Chicago, and shall submit all bids received to DPD for its inspection and written approval. (i) For the TIF-Funded Improvements, the Developer shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the applicable

portion of the Project in a timely manner. If the Developer selects a General Contractor (or the General Contractor selects any subcontractor) submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. (ii) For Project work other than the TIF-Funded Improvements, if the Developer selects a General Contractor (or the General Contractor selects any subcontractor) who has not submitted the lowest responsible bid, the difference between the lowest responsible bid and the higher bid selected shall be subtracted from the actual total Project costs for purposes of the calculation of the amount of City Funds to be contributed to the Project pursuant to Section 4.03(b) hereof. 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 Base Building Component until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

(b) If, prior to entering into an agreement with a General Contractor for construction of any portion of the Project, the Developer does not solicit bids pursuant to Section 6.01(a) hereof, then the fee of the General Contractor proposed to be paid out of City Funds shall not exceed 10% of the total amount of the Construction Contract. Except as explicitly stated in this paragraph, all other provisions of Section 6.01(a) shall apply, including but not limited to the requirement that the General Contractor shall solicit competitive bids from all subcontractors.

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 Base Building Component 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 payments~~ such work in the public way by sureties having an AA rating or better using a bond in the form attached as Exhibit P hereto. 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 8.09 (Prevailing Wage), Section 10.01(e)

(Employment Opportunity), Section 10.02 (City Resident Employment Requirement), Section 10.03 (MBE/WBE Requirements, as applicable), Section 12 (Insurance) and Section 14.01 (Books and Records) 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 of Construction. Upon completion of construction of the applicable Component of the Project in accordance with the terms of this Agreement, and upon the Developer's written request, which shall include a final Project budget detailing the total actual cost of the construction of such Component (the "**Final Project Cost**"), DPD shall issue to the Developer the Component Completion Certificate (each, a "**Certificate**"), all in recordable form certifying that the Developer has fulfilled its obligation to complete the applicable Component of the Project in accordance with the terms of this Agreement. No Certificate shall be issued unless DPD is satisfied that the Developer has fulfilled all of the following obligations that pertain to the Certificate being requested:

(a) General Conditions applicable to each Certificate

(i) The City's Monitoring and Compliance Unit has verified that the Developer is in full compliance with City requirements set forth in Section 10 and Section 8.09 (M/WBE, City Residency and Prevailing Wage) with respect to construction of the Project, and that 100% of the Developer's MBE/WBE Commitment in Section 10.03 has been fulfilled; the Developer must be in compliance on a rolling Project-wide basis at the time each Certificate of Completion is issued for a Component. particular Component; provided however, notwithstanding anything to the contrary contained in this Agreement, prior to issuance of a Certificate of Completion, the particular Component for which a Certificate is being sought is not required to be in compliance with the M/WBE, City Residency and Prevailing Wage requirements of this Agreement so long as the Project, when taken as a whole, is in compliance with respect to these matters at the time of issuance of a Certificate of Completion.

(ii) The To the extent applicable to a particular Component, the Developer has shown that it will be in compliance with the City's following environmental requirements with respect to items such as for the Project; LEED certification and the provision of green roofs as provided in Section 8.23 and the Planned Development at the time of issuance of the Certificate of Completion for the Component.

(iii) The Developer has submitted to DPD adequate documentation of Final Project Costs with respect to the Component.

- (iv) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.
 - (v) DPD's Landmarks Division has inspected and approved work on the historic features of the Property included in the Component.
 - (vi) The inspecting agent of the Developer has certified that all construction work on the Component has been completed in accordance with the Plans and Specifications and the Planned Development.
 - (vii) The Developer has received a Certificate of Occupancy or other evidence acceptable to DPD that the developer has complied with building permit requirements with respect to the Component.
 - (viii) If such Certificate is the final Certificate to be issued, then the conditions described in **Section 7.01(b)** below must be satisfied.
- (b) Conditions applicable to final Certificate of Completion.
- (i) ~~Construction of the Retail Component has been completed with retail uses or, subject to the approval of the City in its sole discretion, other uses complementary to the balance of the Project and binding leases having minimum terms of five years have been executed with tenants for over 50% of the net rentable footage for the Retail Component (currently estimated at 37,575 square feet of the total 75,150 square feet).~~(ii) All of the proposed parking spaces, currently estimated at 825 parking spaces, have been fully completed and are ready for use.
 - ~~(iii)~~ The Developer has satisfied the City's **following** environmental requirements with respect to items such as: LEED certification and the provision of green roofs, as required under the Planned Development and **Section 8.22-8.23.**
- (c) Conditions applicable to **Base Building** Component Completion Certificate with respect to the **Base Building**
- (i) Interior abatement and demolition in the Base Building has been **substantially completed in accordance with the Plans and Specifications.**
 - (ii) Structural reinforcement and demolition of the Base Building is **substantially complete in accordance with the Plans and Specifications.**
 - (iii) Mitigation of exterior wall hazards of the Base Building is **substantially complete in accordance with the Plans and Specifications.**

- (iv) Construction of shared facilities including parking, truck dock and exterior walls is sufficiently complete to permit redevelopment of the Hotel Component, Office Component and Retail ~~Residential~~ Component.
- (v) Center sections of floors 4 through 9 of the Base Building have been removed in accordance with the Plans and Specifications.
- (d) Conditions applicable to Residential Component Completion Certificate with respect to Residential Component
 - (i) South Tower Base Building ~~need to define~~ construction is substantially complete in accordance with the Plans and Specifications, including but not limited to shell, lobby/elevators, mechanicals, and windows.
 - (ii) ~~100% of the affordable units and 75% of the market units have closed~~ Affordable For Sale Units provided on the Property (currently estimated at ~~240~~15 units based on a total of 300 total units) and 75% of the Market Rate For Sale Units (currently estimated at 214 of 285 units) have closed.
 - (iii) ~~300 parking~~ Parking spaces in a ratio of 1:1 are complete and have been made available for sale to ~~condo~~ purchasers in ~~conjunction with residential units~~ of the Market Rate For Sale Units.
- (e) Conditions applicable to Office Component Completion Certificate with respect to Office Component
 - (i) North Tower Base Building construction is substantially complete in accordance with the Plans and Specifications, including but not limited to shell, lobby renovation, elevators, mechanicals, and windows.
 - (ii) Binding leases have been executed for 60% or more of the rentable office square footage in the Office Component (currently estimated at 224,657 square feet of the total 449,314 square feet) ~~and 30% or more of the office space is occupied (currently estimated at 134,794 square feet).~~ *add 40,000*
- (f) Conditions applicable to Hotel Component Completion Certificate with respect to Hotel Component
 - (i) East Base Building construction is substantially complete in accordance with the Plans and Specifications, including but not limited to lobby/elevators, mechanicals, windows, and enclosed walkway over Congress Expressway.

- (ii) Sale of hotel shell to a third party developer has been closed or the Developer has completed construction of this Component; and ~~the Hotel has begun continuous~~hotel operations have commenced.

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

7.02 Effect of Issuance of Certificate; Continuing Obligations. A Certificate relates only to the construction of the Base Building PhaseComponent, the Office PhaseComponent, the Residential PhaseComponent, or the Hotel PhaseComponent of the Project, as applicable, 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 with respect to the Base Building PhaseComponent, the Office PhaseComponent, the Residential PhaseComponent, or the Hotel PhaseComponent, as applicable, 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 and sections described in the following paragraph, and the issuance of a 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, 8.03, 8.06, 8.19 and 8.20 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 with respect to the Base Building PhaseComponent, the Office PhaseComponent, the Residential PhaseComponent, or the Hotel PhaseComponent of the Project, as applicable. 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~~ and draw down the entire amount of the Letter of Credit;

(b) the right (but not the obligation) to complete the TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) that are for public improvements out of City Funds or other City monies. In the event that the aggregate cost of completing ~~such~~the TIF-Funded Improvements which constitute public 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~~which constitute public improvements and which are excess of the available City Funds provided, however, if the Lender becomes the Developer hereunder, the Lender's obligations to pay expenses under this Section 7.03 shall be limited to Lender's interest in the Project and Lender shall not have personal liability or recourse therefor; and

(c) the right to seek any remedies set forth in Section 15.02.

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

(b) the Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

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

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Developer shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-

governmental charges that the Developer is contesting in good faith pursuant to **Section 8.15** hereof);

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

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

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

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

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

(j) prior to the issuance of **the final** Certificate, the Developer shall not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business **(including, but not limited to the lease-up or sale of all or any portions of the Project) and in connection with securing Lender Financing**; (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 **and subject to Section 8.15 below**, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget; and

(l) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an

inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City; and

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

8.02 Covenant to Redevelop. Upon 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, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Planned Development, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied ~~upon issuance by~~ **with respect to any Component(s) for which the City has issued** a Certificate ~~with respect thereto~~.

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

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

8.05 Other Bonds. The Developer shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements (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 Job Creation and Retention. The Developer anticipates that the Project will result in the creation of approximately 1,027 full-time equivalent, permanent jobs at the Project at the completion thereof to be retained or created at the Facility through the Term of the Agreement, provided however, this Section 8.06 shall not create any obligation or requirement on the part of the Developer.

8.07 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 8.09, 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.

8.08 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.

8.09 Prevailing Wage. 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 8.09**.

8.10 Arms-Length Transactions. Unless DPD 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.

8.11 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the

Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business, the Property or any other property in the Redevelopment Area.

8.12 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.

8.13 Financial Statements. The Developer shall obtain and provide to DPD Financial Statements for the Developer's fiscal year ended _____, ~~2006~~200 and, upon request, for each _____year thereafter for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

8.14 Insurance. The Developer, at its own expense, shall comply with all provisions of Section 12 hereof during the construction period. ~~The Developer shall comply (or cause the Condominium Association to comply) with all provisions of Section 12 until the Condominium Association has been turned over in accordance with the Condominium Declaration and as required by the Condominium Act, and the Condominium Association shall thereafter comply with such insurance provisions.~~

8.15 Non-Governmental Charges. (a) Payment of Non-Governmental Charges. Except for the Permitted Liens and to the extent any portion of the Project is owned by the Developer, 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 8.15); or

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

8.16 Developer'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.

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

8.18 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.

8.19 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. ~~The~~ **To the extent any portion of the Project is owned by Developer, 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.

8.20 Affordability Requirements. The Developer shall sell each Affordable For Sale Unit to an income-qualified household for the applicable ~~affordable price~~ **Affordable Price** set forth on Exhibit Q. In connection with the marketing of each Affordable For Sale Unit, the Developer shall attach as an exhibit to each purchase contract the terms of the City Recapture Mortgage and shall state in such purchase contract that the purchaser will be obligated to execute such junior mortgage at the time of closing and comply with its terms thereafter. At each closing of the sale of an Affordable For Sale Unit, the Developer shall cause such fully executed and

acknowledged junior mortgage to be recorded as a junior mortgage lien against the purchaser's Affordable For Sale Unit. Subject to the Developer's compliance with this **Section 8.20**, upon the sale of such Affordable For Sale Unit, the Developer shall thereafter have no liability with respect to any violations of the City Recapture Mortgage.

8.21 Public Benefits Program. The Developer shall, ~~[specify beginning of period of activity], undertake a public benefits program as described on Exhibit N. On a semi-annual basis, the Developer shall provide the City with a status report describing in sufficient detail the Developer's compliance with the public benefits program contribute the sum of \$200,000 to one or more organizations selected by the City prior to the Base Building Completion Date.~~

8.22 Job Readiness Program. ~~The developer and its major tenants shall undertake a job readiness program, as described in Exhibit hereto, to work with the City, through the Mayor's Office of Workforce Development, to participate in job training programs to provide job applicants for the jobs created by the Project and the operation of the Developer's business on the Property.~~

8.22 Intentionally Omitted.

8.23 Green Roof/LEED Certification. The Developer shall comply with and shall contractually obligate each tenant of the Project, as applicable, to comply with the following requirements with respect to the Project:

- ~~(a) Retail buildings with a footprint of 10,000 square feet or more have two options: (1) include a green roof on 75 percent of all flat roof surfaces, an Energy Star rated surface on the remainder, and be encouraged to achieve LEED certification; or (2) include a green roof on 50 percent of all flat roof surfaces, an Energy Star rated surface on the remainder, and be required to achieve LEED certification.~~
- ~~(b) Retail buildings with a footprint of less than 10,000 square feet have two options: (1) include a green roof on 25 percent of all flat roof surfaces and be encouraged to achieve LEED certification; or (2) install Energy Star rated surface on all flat roof areas and achieve LEED certification.~~(c) — The green roof square footage requirement may be divided among the roof areas of all the buildings in the Planned Development as long as the total required green roof square footage is met at the end of the project. All green roof plans must be approved by DPD.
- (db)** DPD also strongly encourages the use of stormwater "best management practices" such as natural landscaping, permeable paving, drainage swales, and naturalized detention basins, which limit the amount of stormwater entering our combined sewer system. A guide to stormwater best management practices can be obtained from DPD in Room 1101 City Hall or can be downloaded from the Chicago Center for Green Technology website.

8.24 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~~**constructing the Property Project** (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 **(when taken as a whole and not on a Component-by-Component basis)**, at least the following percentages of the MBE/WBE Budget (as set forth in **Exhibit H-2** hereto) 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

The Developer hereby represents and warrants to the City that the Developer has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto, the Planned Development and the Redevelopment Plan.

Without limiting any other provisions hereof, the Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a ~~direct or indirect~~ result of any of the following, ~~regardless of whether or not caused by, or within the control of the Developer:~~ (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Developer, or any person directly or indirectly controlling, controlled by or under common control with the Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Developer), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property. **If a lender providing Lender Financing becomes the Developer hereunder, the Lender's liability for the covenants and agreements set forth in this Section 11 shall be limited to the Lender's interest in the Project and shall not create recourse to other assets of the Lender.**

SECTION 12. INSURANCE

The Developer must provide and maintain, **or cause to be provided or maintained,** at Developer's own expense, or cause to be provided and maintained during the term of this

Agreement (or as otherwise specified below), 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, or 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, or 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~~. The Developer shall cause the insurance requirements in this subparagraph (c) to be incorporated in the applicable condominium declarations.

(d) Other Requirements:

The Developer (~~and, upon request, any condominium association~~) must furnish the City of Chicago, Department of Planning 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 (or any condominium association) 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 (or, if applicable, the condominium association).

The Developer hereby ~~waives and agrees to require their~~that insurers to ~~shall~~ 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, so long as any such change does not increase these requirements.

SECTION 13. INDEMNIFICATION

13.01 General Indemnity. To the extent permitted by law, 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 after notice and an opportunity to cure; 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 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 material misrepresentation in this Agreement or any other agreement relating hereto;

provided, however, that Developer shall have no obligation to an Indemnitee arising from the grossly negligent 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. If Lender becomes the Developer hereunder, Lender's obligation under this Section 13 shall be limited to (i) matters arising after the Lender obtains title to the Project and (ii) Lender's interest in the Project, with no recourse being available to the other assets of the Lender.

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 until two years after the date that the City issues the Final Completion Certificate.

SECTION 15. DEFAULT AND REMEDIES

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

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

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

(c) the intentional 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, including Section 8.15 above, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

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

(g) the entry of any judgment or order against the Developer which (i) remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay after the time frame set forth in such judgment or order, (ii) not appealed within the applicable statutory period or stayed of enforcement or execution; or

(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~~ except in the ordinary course of business; or

(j) ~~the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor);~~ (k) ~~prior to the expiration~~ issuance of the Term of the Agreement final Completion Certificate, the sale or transfer of a majority of the ownership interests of the Developer without the prior written consent of the City; or

~~(n)~~ (k) during the period that the Developer is required to maintain the Letter of Credit, the Letter of Credit will expire within thirty (30) calendar days and the Developer has not delivered a substitute Letter of Credit, in form and substance satisfactory to the City in its sole and absolute discretion the same form as the previous Letter of Credit, within twenty (20) calendar days before the expiration date of the Letter of Credit.

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 the Developer's membership interests.

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement . and any agreement with respect to the Property or the Project to which the City and the Developer are or shall be parties, suspend disbursement withhold the payment of the Construction Phase Assistance and . draw down the entire balance of to the extent not already paid or secured by the Letter of Credit. 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 . In addition, upon the occurrence of an Event of Default, the Developer shall be obligated to repay to the City all previously disbursed Construction Phase Assistance; provided, however, the City shall in no instance have the right to suspend payments on any City Notes once issued.

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.

SECTION 16. MORTGAGING OF THE PROJECT

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

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

(b) In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party

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

(c) Notwithstanding any provision in this Agreement to the contrary, the exercise of the remedies of foreclosure of a mortgage or any sale of Developer's interest in the Property in connection with a foreclosure, whether by judicial proceedings or by virtue of any power of sale contained in the mortgage, or any conveyance of Developer's interest in the Property to the mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of Developer's interest in the Property by the mortgagee or its nominee or designee, or any other exercise of remedies under the documents evidencing Lender Financing, shall not require the consent or approval of the City or constitute a breach of any provision of or a default under this Agreement.

(d) If a default by the Developer under this Agreement occurs and the Developer does not cure it within the applicable cure period, the City shall use reasonable efforts to give to the Mortgagee under an Existing Mortgage copies of any notices of default which it may give to the Developer with respect to the Project. Under no circumstances shall the Developer or any third party be entitled to rely upon this Section 16(d). The failure of the City to deliver such notice shall in no instance alter its rights or remedies under this Agreement.

(e) The City agrees that it shall accept a cure by any mortgagee in fulfillment of the Developer's obligations under this Agreement, for the account of the Developer and with the same force and effect as if performed by the Developer. No cure or attempted cure by or on behalf of such Mortgagee shall cause it to be deemed to have accepted an assignment of this Agreement.

(f) 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
Fax: _____

With Copies To:

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

If to the Developer:

Chicago P. O. Associates
Walton Street Capital, LLC
900 N. Michigan Ave.
Suite 1900
Chicago, IL 60611
Fax: _____
Attention: Raphael Dawson

With Copies To:

DLA Piper US LLP
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
Attention: Richard F. Klawiter
Fax: (312) 630-7337

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch provided that in the event notice is given pursuant to clause (b) the party sending the notice shall also send a copy of such notice in the manner set forth in clause (a), (c) or (d) and also include written confirmation that the notice sent by facsimile was sent out and received by the other party. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests

sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement **Exhibit D** hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this **Section 18.01** shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, ~~or construction or job-creating~~ obligations of Developer (including those set forth in **Sections 10.02 and 10.03** hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer by more than ninety (90) days **(except as otherwise permitted in Section 3 above)**.

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

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

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

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

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

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

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

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

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

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

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

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

18.14 Approval. Wherever this Agreement provides for the approval or consent of the City, 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~~ With respect to each Component, the Developer, prior to the fifth (5th) anniversary of the date of issuance of a Certificate of Completion for such Component, may not sell, assign or otherwise transfer its interest in this Agreement with respect thereto in whole or in part or in said Component without the written consent of the City. Any successor in interest to the Developer under this Agreement shall certify in writing to

the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.19** (Real Estate Provisions) and **8.24** (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 not caused by the Developer, including, but not limited to, 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.

CHICAGO P.O. ASSOCIATES, L.L.C.

By: _____

Its: _____

CHICAGO P.O. ASSOCIATES, INC.

By: _____

Its: _____

CITY OF CHICAGO

By: _____

_____,
Commissioner, Department
of Planning and Development

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

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

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

Notary Public

My Commission Expires _____

(SEAL)

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

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

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

Notary Public

My Commission Expires _____

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9:38:12 AM

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Legend:	
<u>Insertion</u>	
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Statistics:		
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Moved from		7
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Total changes		864