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**NEW WEST KEDZIE L.L.C.  
REDEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF CHICAGO

AND

NEW WEST KEDZIE L.L.C.,  
An Illinois Limited Liability Company

This agreement was prepared by  
and after recording return to:  
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8001844

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## LIST OF EXHIBITS

Exhibit A	Redevelopment Area
Exhibit B	*Property
Exhibit B-1	*Property Conveyed Post Closing
Exhibit C	*TIF-Funded Improvements
Exhibit D	Redevelopment Plan
Exhibit E	Construction Contract
[Exhibit F	Escrow Agreement - if required by lender
Exhibit G	*Permitted Liens
Exhibit H-1	*Project Budget
Exhibit H-2	*MBE/WBE Budget
Exhibit I	Approved Prior Expenditures
Exhibit J	Opinion of Developer's Counsel
Exhibit K	Requisition Form [use if no escrow]
Exhibit L	*Form of City Note
Exhibit M	Form of Subordination Agreement
Exhibit N	Form of Payment Bond
Exhibit O	City Recapture Mortgage

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

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This agreement was prepared by and  
after recording return to:  
Judith A. El-Amin, Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

**NEW WEST KEDZIE L.L.C.**  
**REDEVELOPMENT AGREEMENT**

This New West Kedzie L.L.C. Redevelopment Agreement (this "**Agreement**") is made as of this \_\_\_ day of \_\_\_\_\_, 2006, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and New West Kedzie L.L.C., an Illinois limited liability company (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 May 17, 2000: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Midwest Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Midwest 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 Midwest 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 on Exhibit A hereto.

D. **The Project:** The Developer intends to purchase from the City (the "Acquisition") i) certain property within the Redevelopment Area generally located between 706-817 South Kedzie Avenue, 905-925 South Kedzie Avenue, and 3207 W. Flournoy Street, Chicago, Illinois 60612 and legally described on Exhibit B hereto on the Closing Date, as defined herein ("City Parcel 1") and (ii) certain property located within the Redevelopment Area at 901 South Kedzie Avenue, Chicago, Illinois 60612 and legally described on Exhibit B-1 hereto after the Closing Date, as defined herein ("City Parcel 2" and City Parcel 1 are collectively referred to herein as, the "Property"), and, within the time frames set forth in Section 3.01 hereof, shall commence and complete construction of the following, collectively referred to herein as the "Facility:" approximately 102 new residential units on six separate sites with a total living area of approximately 137,000 square-feet, buildings that will include Market-Rate Units and Affordable Units, all of which will comply with the Chicago Standard Energy Star rating, and a parking pad space or a garage will be provided for each residential unit. The Market-Rate Units will include five three-bedroom single family houses, ten three-bedroom townhouses, and 17 one-bedroom, ten two-bedroom and 35 three-bedroom condominium units. The number of Market-Rate Units may vary in the event that purchasers combine more than one unit into a larger unit or request more smaller units. The Affordable Units, which shall be subject to a City Recapture Mortgage, will represent 25% of the total number of Market-Rate Units and Affordable Units and, in any event, will consist of a minimum of 25 units (nine one-bedroom, ten two-bedroom, and six three-bedroom condominium units). The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C and other obligations described above are collectively referred to herein as the "Project." The Project shall be commenced and completed within the time frames set forth in Section 3.01. The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. **Redevelopment Plan:** The Project will be carried out in accordance with this Agreement and the City of Chicago Midwest Tax Increment Financing Redevelopment Plan and Project dated October 12, 1999 and revised October 29, 1999, January 26, 2000 and March 15, 2000 (the "Redevelopment Plan") attached hereto as Exhibit D, as amended from time-to-time.

F. **City Financing:** The City agrees to use, in the amounts set forth in Section 4.03



hereof, (i) the proceeds of the City Note (defined below) and/or (ii) Incremental Taxes (as defined below), to pay for or reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement and the City Note.

In addition, the City may, in its discretion, issue tax increment allocation bonds ("**TIF Bonds**") secured by Incremental Taxes pursuant to a TIF bond ordinance (the "**TIF Bond Ordinance**") at a later date, the proceeds of which may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Incremental Taxes (including any such payment made pursuant to any City Note provided to the Developer pursuant to this Agreement), to make payments of principal and interest on the City Note, or in order to reimburse the City for the costs of TIF-Funded Improvements.

**G. Prior TIF Financing:** Pursuant to a note ordinance adopted by the City Council on October 31, 2001, the City issued its Tax Increment Allocation Revenue Note (Midwest Redevelopment Project) Taxable Series 2002 (dated March 5, 2002), in the amount of \$4,900,000 to Harris Bank, secured by the pledge of certain Incremental Taxes (as hereinafter defined) for the payment of redevelopment project costs in connection with the City's Small Business Improvement Program and Neighborhood Improvement Program (the "**Bank Note**").

Pursuant to an ordinance adopted by the City Council on June 24, 2004, the City entered into a redevelopment agreement with Liberty Square Limited Partnership (dated July 8, 2004), whereby the City pledged certain Incremental Taxes (as hereinafter defined) for the payment of redevelopment project costs in connection with the Liberty Square Redevelopment Project in an amount not to exceed \$1,900,000 from the incremental taxes generated by the parcels occupying the Liberty Square Redevelopment Project (the "**Liberty Square Obligation**").

Pursuant to an ordinance adopted by the City Council on September 1, 2004, the City has entered or will enter into an Intergovernmental Agreement with the Board of Education of the City, whereby the City agrees to transfer certain Incremental Taxes from the Redevelopment Area to the Madison/Austin Corridor Redevelopment Project Area, as part of a pledge to pay the City's Tax Increment Allocation Revenue Note (Madison/Austin Corridor Redevelopment Project) Series 2004H (dated December 9, 2004) in a principal amount not to exceed \$18,500,000 for the payment of redevelopment project costs in connection with the construction of DePriest Elementary School (the "**School Obligation**"). Pursuant to Article 3, Section 1(d)(iii) of the Intergovernmental Agreement, dated November 24, 2004 (the "**IGA**") between the City, by and through DPD and the Board of Education of the City of Chicago (the "**Board**") regarding DePriest Elementary School, as amended by the First Amended to Intergovernmental Agreement, dated December 9, 2004, between the City, by and through DPD, and the Board (the "**First Amendment**" with the IGA are collectively referred to herein as the "**Amended IGA**"), the City may pledge up to 90% of the "Increment generated from the construction value of a new assisted development project", as defined therein, to a developer on a basis superior to that of the Board.

The Developer acknowledges that the Bank Note and the Liberty Square Obligation are prior liens on the Midwest Redevelopment Project Area TIF Fund and that the Developer has no claim on any monies except for monies which are Available Incremental Taxes (as defined herein). The City agrees to give written notice to the Board, at least seven days prior to the Closing Date, that it will pledge Available Incremental Taxes to the Developer and meet other requirements as prescribed in Article 3, Section 1(d)(iii) of the Amended IGA.

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 **Recital B** hereof.

**“Actual Profit”** shall mean an amount equal to Net Sales Proceeds, plus City Funds, less Actual Project Costs.

**“Actual Project Costs”** shall mean all hard and soft costs actually expended to implement the Project, exclusive of sales commissions, closing costs and developer fee, management fee, overhead and profit, as such costs are proved up to the satisfaction of DPD.

**“Acquisition”** shall have the meaning set forth in **Recital D** hereof.

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

**“Affordable Price”** shall have the meaning set forth in **Exhibit B** to the City Recapture Mortgage attached hereto as **Exhibit O**.

**“Affordable Units”** shall mean the nine one-bedroom condominium units, ten two-bedroom condominium units and six three-bedroom condominium units included in the Project, each of which shall be sold to a Qualified Household for the applicable Affordable Price

**“Available Incremental Taxes”** shall mean an amount equal to 75 percent of the Incremental Taxes deposited in the Midwest Redevelopment Project Area TIF Fund attributable to the taxes levied on the Property after payment has been made for the debt service of the Bank Note.

**“Bank Note”** shall have the meaning set forth in **Recital G** hereof.

**“Certificate”** shall have the meaning set forth in **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 Plans and Specifications or the Project Budget as described in **Section 3.02**, **Section 3.03** and **Section 3.04**, respectively.

**“City Council”** shall have the meaning set forth in **Recital C** hereof.

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

**“City Funds”** shall mean the funds paid to the Developer as described in **Section 4.03(b)** hereof.

**“City Note”** shall mean the City of Chicago Tax Increment Allocation Revenue Note (Midwest Redevelopment Project Area), Series 2006 to be in the form attached hereto as **Exhibit L**, in the maximum principal amount of \$1,750,000, issued by the City to the Developer after the issuance of the Certificate, bearing interest at the City Note Interest Rate, and as more fully described in **Section 4.03** hereof.

**“City Note Interest Rate”** shall mean an annual rate equal to the median rate of a 10-year Treasury bond as published by Bloomberg for 15 business days prior to the date of issuance of the City Note plus 300 basis points, but in no event exceeding nine percent (9%).

**“City Parcel 1”** shall have the meaning set forth in **Recital D** hereof.

**“City Parcel 2”** shall have the meaning set forth in **Recital D** hereof.

**“City Recapture Mortgage”** shall mean the Mortgage, Security Agreement and Recapture Agreement Including Restrictive Covenants to be executed by purchasers of Affordable 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 O**.

**"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.

**"Commissioner"** shall mean the Commissioner of the City's Department of Planning and Development.

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

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

**"Deed"** shall have the meaning set forth in **Section 4.09** hereof.

**"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).

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

**"Excess Profit"** shall mean an amount equal to Actual Profit, less Threshold Profit where the Developer has sold all of the Affordable Units and ninety percent (90%) of the Market Rate Units and will include in Excess Profit the estimated profit from unsold Market Rate Units by calculating the average price per square foot of the sold Market Rate Units.

**"Existing Mortgage"** shall have the meaning set forth in **Section 16** hereof.

**“Facility”** shall have the meaning set forth in **Recital D** hereof.

**“Financial Statements”** shall mean 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 Renzi Construction Corporation.

**“Governmental Charge”** shall have the meaning set forth in **Section 8.19(a)** hereof.

**“Gross Sales Proceeds”** shall mean all income generated by the Project, including but not limited to the proceeds from the sale of residential units, parking spaces and upgrades to residential units, parking spaces, and upgrades to residential units.

**“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.

**“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 Midwest Redevelopment Project Area Special Tax Allocation 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.

**“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.

**“Liberty Square Obligation”** shall have the meaning set forth in **Recital G** hereof.

**“Market-Rate Units”** shall mean the five three-bedroom single family houses, ten three-bedroom townhouses, and 62 one-, two-, three-bedroom (or such lesser number as may be applicable if units are combined) condominium units included in the Project that shall be sold at market rates.

**“MBE(s)”** shall mean a business which, as of the date that it enters into a contract relating to the Project, is 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 MBE/WBE Program.

**"MBE/WBE Budget"** shall mean the budget attached hereto as **Exhibit H-2**, as described in **Section 10.03**.

**"MBE/WBE Program"** shall have the meaning set forth in **Section 10.03** hereof.

**"Midwest Redevelopment Project 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.

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

**"Net Sales Proceeds"** shall mean Gross Sales Proceeds minus actual sales commissions and closing costs.

**"New Mortgage"** shall have the meaning set forth in **Section 16** hereof.

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

**"Performance L/C"** shall mean an irrevocable, direct pay letter of credit with a principal balance as described in this definition issued by a financial institution and in a form acceptable to the City, naming the City as the sole beneficiary, providing by its terms for payment to the City upon the City's submission of a certificate stating that the City is entitled to draw upon such Performance L/C upon the occurrence of an Event of Default under the terms of this Agreement. The Performance L/C shall be up to the principal amount of \$1,750,000, with an initial principal amount of \$1,166,667. Upon the Developer's delivery to the City of written evidence that the Developer has completed the construction of and sold a minimum of 34 residential units, including a minimum of 8 Affordable Units, and provided that there exists no Event of Default or default under **Section 8.15** hereof which, with the giving of notice and the passage of time, could become an Event of Default, then the principal balance of the Performance L/C may decline by \$583,330 upon the issuance of the Phase I Certificate (this assumes that the balance of the Initial Payment, as defined in **Section 4.03(b)(i)**, has been made and the principal amount of the Performance L/C has been increased to \$1,750,000); however, if the total balance of the Initial Payment has not been paid by the City to the Developer, pursuant to **Section 4.03(b)(i)** herein, before the issuance of the Phase I Certificate, then the Performance L/C may not be decreased until after the Phase II Certificate is issued. Thereafter, upon the Developer's delivery to the City of written evidence that the Developer has completed the construction of and sold at least an additional 34 residential units, for a total of 68 completed residential units, including 16 Affordable Units and provided that there exists no Event of Default or default under **Section 8.15** hereof which, with the giving of notice and the passage of time, could become an Event of

Default, then the principal balance of the Performance L/C may decline by \$583,330 upon the issuance by the City of the Phase II Certificate. The Performance L/C shall, by its terms, renew annually for the principal amount applicable at the time of renewal until the issuance by the City of a Certificate pursuant to **Section 7.01** hereof, provided that the issuer may elect to not renew such Performance L/C by giving the City written notice of such election at least thirty (30) days prior to the expiry date, in which case the Developer shall deliver a replacement Performance L/C to the City at least ten (10) days prior to such expiry date.

**"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.

**"Phase I Certificate"** shall mean a certificate issued by the City upon the Developer's delivery to the City of written evidence that the Developer has completed the construction of and sold a minimum of 34 residential units, including a minimum of 8 Affordable Units.

**"Phase II Certificate"** shall mean a certificate issued by the City upon the Developer's delivery to the City of written evidence that the Developer has completed the construction of and sold at least an additional 34 residential units, for a total of 68 completed residential units, including 16 Affordable Units.

**"Plans and Specifications"** shall mean 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 **Recital D** hereof.

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

**"Property"** shall have the meaning set forth in **Recital D** and **Exhibit B** and **Exhibit B-1** hereof.

**"Qualified Household"** shall have the meaning set forth in **Exhibit B** to the City Recapture Mortgage attached hereto as **Exhibit P**.

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

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

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

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

**“School Obligation”** shall have the meaning set forth in **Recital G** hereof.

**“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 land title survey of the Property, accompanied by an affidavit from the surveyor dated the Closing Date indicating no changes to the survey, 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).

**“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, 2024).

**“Threshold Profit”** shall mean fifteen percent (15%) of Actual Project Costs.

**“TIF Adoption Ordinance”** shall have the meaning set forth in **Recital C** hereof.

**“TIF Bonds”** shall have the meaning set forth in **Recital F** and **Section 8.05** hereof.

**“TIF Bond Ordinance”** shall have the meaning set forth in **Recital F**.

**“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 **Recital C** hereof.

**“Title Company”** shall mean Greater Illinois Title Company.



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

**"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 which, as of the date that it enters into a contract relating to the Project, is 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 MBE/WBE Program.

### SECTION 3. THE PROJECT

**3.01 The Project.** With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof: (i) commence construction no later than six months after the Closing Date; and (ii) complete construction of the Project no later than December 30, 2009.

**3.02 Scope Drawings and Plans and Specifications.** The Developer shall deliver to DPD the Scope Drawings and Plans and Specifications for approval. Any 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 Twenty-One Million Two Hundred Forty-Four Thousand Four Hundred and Twenty-Six Dollars (\$21,244,426). The Developer hereby certifies to the City that (a) the City Funds, together with Lender Financing and Equity described in **Section 4.01** hereof, shall be sufficient to complete the Project; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to 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.** Any Change Orders that individually or in the aggregate (a) permanently increase or decrease the Project Budget by more than ten percent (10%), (b) reduce the net rentable square footage of the Project by more than five percent (5%), or (c) change the basic uses of the Project must be submitted by the Developer to DPD for DPD's prior written approval. 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. The Developer shall not authorize nor permit the performance of any work relating to the Change Order described in the preceding clauses (a), (b) or (c) or the furnishing of materials in connection therewith prior to the receipt of DPD's written approval, or DPD's deemed approval. 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 an obligation on the part of the City to increase the amount of City Funds payable pursuant to this Agreement or provide any other funding.

**3.05 DPD Approval.** Any approval granted by DPD of the 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 Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required hereunder.

**3.07 Progress Reports and Survey Updates.** The Developer shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**). 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 architect (other than the Developer's architect but which may be the same as Lender uses) approved by DPD shall be selected to act as the inspecting agent or architect, at the Developer's expense, provided its reasonable and customary 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. At the Developer's option, the inspecting architect may be the inspecting architect engaged by any lender providing

Lender Financing for the Project, provided that said architect is an independent architect licensed by the State of Illinois.

**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 and are of general applicability to other property within the City.

#### SECTION 4. FINANCING

**4.01 Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$21,244,426, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to <u>Sections 4.05 and 4.06</u> )	\$ 620,000
Initial Payment of City Funds (subject to <u>Section 4.03</u> )	1,750,000
Lender Financing (\$4,000,000 revolving loan)	<u>18,874,426</u>
<b>ESTIMATED TOTAL</b>	<b>\$ 21,244,426</b>

**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 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. The costs listed on **Exhibit C** are Redevelopment Project Costs.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to pay and reimburse the Developer for TIF-eligible expenses up to a maximum of Three Million Five Hundred Thousand Dollars (\$3,500,000)(the "City Funds") as follows:

(i) Initial Payment. The City will make an initial payment of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) (the "**Initial Payment**") as follows: (x) Nine Hundred Sixty Thousand and One Dollars (\$960,001) on the Closing Date; and (y) the balance of the Initial Payment, up to Seven Hundred Eighty-Nine Thousand Nine Hundred and Ninety-Nine Dollars (\$789,999), will be made in two payments after the Closing Date upon evidence of TIF-eligible expenses incurred by the Developer (as described in **Section 4.03(a)** above). Prior to the City paying the balance of the Initial Payment before the Phase I Certificate is issued, the Developer must increase the Performance L/C to match the amount of the City Funds paid to the Developer (includes \$960,001 paid on the Closing Date and all or a portion of the balance of the Initial Payment to be paid to the Developer by the City). All payments will be secured by the Performance L/C that will be released by the City after the issuance of the Certificate.

(ii) City Note. The City will issue the City Note to the Developer upon the issuance of the Certificate in a principal amount not to exceed the lesser of: (i) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) or (ii) an amount equal to the Available Incremental Taxes; and provided, however, that (1) the principal amount of the City Note may be reduced in the event that the Developer realizes Excess Profits on the Project as described in paragraph (c) below, and (2) that payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the Midwest Redevelopment Project Area TIF Fund being sufficient for such payments. Interest on City Note will accrue at the City Note Interest Rate from its date of issuance, as more fully described in **Exhibit L**, and will compound annually.

(iii) Payments on the City Note. The first payment with respect to the City Note shall be made on the later to occur of March 1, 2009 (from Available

Incremental Taxes received by the City in the prior year) or two months after the City's receipt of a Requisition Form in accordance with **Section 4.04**, subject to **Section 4.03(c)**. Thereafter, annual payments shall be made on the later to occur of March 1<sup>st</sup> of each subsequent calendar year or two months after the City's receipt of a Requisition Form, subject to **Section 4.03(c)**. If, in any year, the City does not make such scheduled annual payment, then, in the next year (and if required, any subsequent years), Available Incremental Taxes shall first be applied to repay any shortfall amounts, and then applied to make such year's scheduled annual payment. In the event Available Incremental Taxes are more than sufficient to pay the scheduled annual payment (and no shortfall amounts remain unpaid), the City, in its sole discretion, may elect to use such excess Available Incremental Taxes to prepay the City Note or for any other legal use that the City may deem necessary or appropriate. The City Note may be prepaid in whole or in part, without premium or penalty, at any time.

If the Developer defaults pursuant to **Section 15.01**, interest shall immediately cease to accrue on the City Note effective as of the date on which the Event of Default is deemed to have occurred pursuant to **Section 15.03**, and no payments shall be made with respect to the City Note during any cure period applicable to such default. Any Available Incremental Taxes that would have been used to make payments during such time period shall, however, be reserved by the City pending the possible cure of such default. If such default is cured, interest shall again begin to accrue on the City Note effective as of the actual date on which the default is cured and any reserved payments of Available Incremental Taxes shall be released by the City and used to pay the City Note. If such default is not cured or is not subject to a cure period, the City shall have the remedies set forth in **Section 15.02**.

(iv) **Transfer of City Note**. After its issuance, the City Note may be pledged to a lender providing Lender Financing, but may not be sold without the consent of the Commissioner of DPD, which consent shall be in the Commissioner's reasonable discretion. Notwithstanding any such permitted pledge, the City shall have no obligation to make any payments with respect to the City Note except to the Developer, and then subject to the conditions set forth in this Agreement, including but not limited to **Section 18.15**, and in the City Note.

(v) **Cessation of City Note Payments**. If an Event of Default occurs (but subject to Section 15.03), the City shall have no further obligations to make any payments with respect to the City Note and the City shall have the remedies set forth in **Section 15**.

(vi) **Other Incremental Taxes**. Any Incremental Taxes that either (a) are not Available Incremental Taxes or (b) are not required to make payments under

this Agreement (whether because all currently due payments have been made, because of the failure of the City Note to issue, because of an Event of Default entitling the City to terminate further payments with respect to the City Note, because of the full repayment of the City Note, or otherwise) shall belong to the City and may be pledged or used for such purposes as the City deems necessary or appropriate.

(c) Excess Profit Provision. (i) Prior to the issuance of the Certificate, the Developer shall submit to DPD an updated pro forma, including an updated Project Sources and Uses, using the final Project data. If the Developer realizes an Excess Profit, for every \$1.00 of Excess profit, the principal amount of the City Note will be decreased by \$.50. The amount that the City Note shall be decreased shall be determined prior to the issuance of a Certificate, and the principal amount of the City Note shall be adjusted accordingly.

**4.04 Requisition Form.** On the Closing Date and prior to each November 1 (or such other date as the parties may agree to) thereafter, beginning in 2009 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 in the form attached hereto as Exhibit K, 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).

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

(a) Prior Expenditures. Only those expenditures made by the Developer with respect to the Project that occurred 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 reasonable 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 not listed on Exhibit I 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 twenty percent (20%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project (the "**Administrative Fee**"). 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 of costs and expenses from one line item to another being prohibited without the prior written consent of DPD, subject to the terms of Section 3.04. DPD shall not unreasonably withhold its consent to such transfers so long as the Corporation Counsel has advised DPD that an expenditure qualifies as an eligible cost under the Act.

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

(i) Disbursement of Equity and the Initial Payment. Each amount paid pursuant to this Agreement, whether for TIF-Funded Improvements or otherwise, shall be charged first to Equity, except funds from the Initial Payment, pursuant to Section 4.03(b) hereof, may only be used for TIF-Funded Improvements.

(ii) 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.

**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 Execution of Certificate of Expenditure**. Prior to the execution of a Certificate of Expenditure by the City for the City Note, the Developer shall submit documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its reasonable discretion. Delivery by the Developer to DPD of any request for 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 execution of a Certificate of Expenditure, that:

(a) the total amount of the 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 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 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 30 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its reasonable 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 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 execution of the Certificate of Expenditure, including but not limited to requirements set forth in the Bond Ordinance, if any, TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

**4.08 Conditional Grant.** The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed as provided in **Section 15.03** hereof.

**4.09 Sale of 25 City-Owned Real Property Parcels.** The City agrees to sell and Developer agrees to purchase the 25 lots located at 709-925 South Kedzie Avenue (collectively, the "**Property**"), and legally described in **Exhibit B** and **Exhibit B-1** hereof, for \$1,000,001 total purchase price in cash from Developer, subject to the following terms and conditions:

(a) **Form of Deed.** On the Closing Date, the City will convey City Parcel 1 by a quitclaim deed to the Developer for the sum of Nine Hundred Sixty and One Dollars (\$960,001.00) and subject to the outcome of pending litigation, the City will convey title to City



Parcel 2 by a quitclaim deed to the Developer for the sum of Forty Thousand Dollars \$40,000.00). Both conveyances are subject only to the terms of this Agreement and the following:

- (i) The Redevelopment Plan for this Redevelopment Area.
  - (ii) The standard exceptions in an ALTA title insurance policy.
  - (iii) General real estate taxes which are not yet due and owing, subject to the City's duty under **Section 4.09(d)**.
  - (iv) Easements, encroachments, covenants and restrictions of record and not shown of record.
  - (v) Such defects which cannot reasonably be cured but will not affect the use or marketability of the Property.
- (b) **Title Commitment and Insurance**. The City agrees to provide Developer with a current title commitment issued by Greater Illinois Title Insurance Company showing the City in title to the Property. Developer will pay the cost of, and will be responsible for, obtaining any title insurance, extended coverage or endorsements it deems necessary.
- (c) **Survey**. Developer will be responsible for any survey it deems necessary.
- (d) **Real Estate Taxes**. The City agrees to use reasonable efforts to obtain the waiver of any delinquent real estate tax liens on the Property, to the extent that such taxes may be waived or abated by writing to the County Assessor a customary abatement letter or filing a motion to vacated any tax sale made in error. Developer will be responsible for all taxes accruing after the Closing Date.
- (e) **Recordation of Deeds**. Developer, at its expense, will promptly record the deeds at the Office of the Cook County Recorder of Deeds.

#### **4.10 Environmental Matters Concerning the Acquired Property.**

- (a) The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and Developer agrees to accept the Property "as is."
- (b) It is responsibility of Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property. Prior to the Closing, Developer will have the right to request a right of entry for the purpose of conducting environmental tests on the Property. If such a request is made, the City will grant Developer a right of entry for such

purpose. The granting of the right of entry, however, will be contingent upon Developer obtaining all necessary permits and the following types and amounts of insurance: (x) commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured; (y) automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and (z) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to perform any work on the Property. All insurance policies will be from insurance companies authorized to do business in the State of Illinois, and will remain in effect until completion of all activity on the Property. Developer will deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. Developer expressly understands and agrees that any coverage and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities stated in this Agreement.

(c) Developer agrees to carefully inspect the Property prior to the commencement of any activity on the Property to make sure that such activity will not damage surrounding property, structures, utility lines or any subsurface lines or cables. Developer will be solely responsible for the safety and protection of the public. The City reserves the right to inspect any work being done on the Property. Developer's activities on the Property will be limited to those reasonably necessary to perform the environmental testing, or, subject to the terms of an agreed upon right of entry, remediation work. Upon completion of the work, Developer agrees to restore the Property to its original condition. Developer will keep the Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for Developer, and agrees to indemnify and hold the City harmless against any such liens.

(d) Developer agrees to deliver to the City a copy of each report prepared by or for Developer regarding the environmental condition of the Property. If prior to the Closing, Developer's environmental consultant determines that contamination exists on the Property to such extent that the parties agree that the estimated cost of remediation (such estimated cost being determined by the consultant) is too excessive for Developer, Developer may declare these Real Estate Purchase Sections (Sections 4.08 and 4.09) null and void by giving written notice thereof to the City. Developer agrees that a request to terminate the Real Estate Purchase Sections will not be made until all reports concerning the condition of the Property have been reviewed by the City.

(e) If after the Closing, the environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized, it will be the sole responsibility and obligation of Developer to take such action as is necessary to put the Property in a condition which is suitable for the intended use of the Property.

## 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.** The Developer has submitted to DPD, and DPD has approved, the Scope Drawings in accordance with the provisions of **Section 3.02** hereof.

**5.03 Other Governmental Approvals.** The Developer has secured or will secure all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted or will submit 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 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 Equity as set forth in **Section 4.01**) to complete the Project. The Developer has delivered to DPD a copy of the construction escrow agreement, if any, entered into by the Developer regarding the Lender Financing. Any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

**5.05 Acquisition and Title.** On the Closing Date, the Developer has furnished the City with a copy of the Title Policy for Parcel 1, showing the Developer as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on **Exhibit G** hereto and evidences the recording of this Agreement pursuant to the provisions of **Section 8.18** hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's comprehensive endorsement and zoning 3.0. 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 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.** On the Closing Date, the Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as **Exhibit J**, with such changes as required by or acceptable to Corporation Counsel. If the Developer has engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in **Exhibit J** hereto, such opinions were obtained by the Developer from its general corporate counsel.

**5.10 Evidence of Prior Expenditures.** The Developer has provided evidence satisfactory to 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.

**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 the Developer is qualified to do business; a secretary's certificate or similar instrument in such form and substance as the Corporation Counsel may require; operating agreement of the company; 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.

**5.16 Performance L/C.** The Developer shall have delivered to the City the Performance L/C.

## 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 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, as requested by DPD, to DPD for its inspection. 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 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. 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 DPD's request. The Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

(b) If, prior to entering into an agreement with a General Contractor for construction 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 percent 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.** The Developer has delivered to DPD and DPD has approved the form of Construction Contract with the General Contractor selected to handle the Project in accordance with **Section 6.01** above. The City may draw on the Performance L/C if the Construction Contract is not executed by the Developer and the General Contractor within nine months after the Closing Date. The Developer shall deliver to DPD any modifications, amendments or supplements thereto.

**6.03 Performance and Payment Bonds.** Prior to the commencement of any portion of the Project which includes work on the public way, the Developer shall require that the General Contractor be bonded for its payment related to such work by sureties having an AA rating or better using a bond in the form attached as **Exhibit N** 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 seven (7) business days of the execution thereof.

## **SECTION 7. COMPLETION OF CONSTRUCTION AND SALE OF UNITS**

**7.01 Certificate of Completion.** Upon completion of construction of the Project and the sale of the Affordable Units and the Market Rate Units in accordance with the terms of this Agreement, and upon the Developer's written request, DPD shall issue to the Developer the Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. The City agrees to partial releases of this Agreement from time to time upon the sale of the residential units so that the Developer may convey title to the residential units.

(a) The Certificate will not be issued until:

- (i) The Developer has notified the City in writing that the Project has been completed as defined in this Agreement, including the designation of each residential unit as Energy Star compliant; and
- (ii) The Developer has received a Certificate of Occupancy or other evidence acceptable to DPD that the Developer has complied with building permit requirements; and
- (iii) The Developer has sold all of the Affordable Units and 90% of the Market Rate Units; and
- (iv) The Developer has complied with its obligations under the terms of the affordable housing requirements for the Project as set forth in, but not limited to, Section 8.20 of this Agreement; and
- (v) 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
- (vi) The Excess Profit amount, if any, has been determined.

(b) DPD shall respond to the Developer's written request for the applicable Certificate within thirty (30) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures and the City thereafter shall issue the Certificate within thirty (30) days or send the Developer a written statement which details the way in which the Project does not conform to the Agreement or has not been satisfactorily completed.

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

Those covenants specifically described at Sections 8.02 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 the Certificate, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of the 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, draw on the Performance L/C and cease all disbursement of City Funds not yet disbursed pursuant hereto;

(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) out of City Funds or other City monies. In the event that the aggregate cost of completing such TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, the Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of City Funds from the Developer and to exercise 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 an Illinois limited liability company 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 action, and does not and will not violate its Articles of Organization or operating agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which 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 until the earlier to occur of the expiration of the Term of the Agreement and the date, if any, on which the Developer has no further interest in the Project, shall remain solvent and able to pay its debts as they mature;

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

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

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

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

(j) prior to the issuance of the Certificate, 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, except for the sale of individual residential units; (3)

enter into any transaction outside the ordinary course of the Developer's business that would materially adversely affect the ability of the Developer to complete the Project; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity that would materially adversely affect the ability of the Developer to complete the Project; or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition; and

(k) the Developer has not incurred, and, prior to the issuance of the Certificate, shall not, without the prior written consent of the Commissioner, 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; provided that nothing in this **Section 8.01(k)** shall be construed to prohibit the granting of easements and other similar recordable interests and liens in the Property necessary or desirable for the redevelopment of the Property; 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.

(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 and the Scope Drawings as provided in **Sections 3.02** and **3.03** hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes

applicable to the Project, the Property and/or the Developer. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of the 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 TIF 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 payable from Incremental Taxes 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 of, the TIF-Funded Improvements ("**TIF 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 TIF 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 [Reserved]**

**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; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and City resident obligations in **Section 10** shall be applied on an aggregate basis and the failure of the General Contractor to require each subcontractor to satisfy, or the failure of any one subcontractor to satisfy, such obligations shall not result in a default or a termination of the Agreement or require payment of the City resident hiring shortfall amount so long as such **Section 10** obligations are satisfied on an aggregate basis.. The Developer shall deliver to the City written progress reports detailing (1) compliance with the requirements of **Sections 8.08, 10.02 and 10.03** of this Agreement (based on expenditures to-date); and (2) copies of draw requests to monitor for City requirements, and any other reports. Such reports shall be delivered to the City when the Project is 50 percent completed (to be measured in dollars expended to date, based on 50 percent of the Project Budget in the executed Redevelopment Agreement), and thereafter on a regular quarterly basis; failure to do so will be deemed an Event of Default. 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 for all construction trades, to all Project employees employed by the Developer. 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 Illinois Department of Labor 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. The Developer will be using New West Realty, which is an affiliate of the Developer, to market the parcels.

**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 2004 and, until the earlier to occur of the expiration of the Term of the Agreement and the date, if any, on which the Developer has no further interest in the Property, the Developer shall obtain and provide to DPD Financial Statements for each fiscal year thereafter. In addition, until the earlier to occur of the expiration of the Term of the Agreement and the date, if any, on which the Developer has no further interest

in the Property, 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.

**8.15 Non-Governmental Charges.** (a) Payment of Non-Governmental Charges. Except for the Permitted Liens, the Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Developer shall furnish to 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. Subject to subsection (ii) below, 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 or 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,

(A) 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

(B) 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 Affordable Housing Covenant.** The Developer agrees and covenants to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of this Affordable Housing Covenant (as set forth in this **Section 8.20**) shall govern the terms of the Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

(a) The Facility shall be operated and maintained solely as a residential development.

(b) At least twenty-five (25) of the 102 units in the Facility shall be Affordable Units, i.e., sold to Qualified Households for the applicable Affordable Price, all as set forth on **Exhibit Q**. In connection with the marketing of each Affordable Unit, the Developer shall attach as an exhibit to each purchase contract a copy 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

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 Unit.

**8.21 Survival of Covenants.** All warranties, representations, covenants and agreements of the Developer contained in this **Section 8** and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in **Section 7** hereof upon the issuance of the 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, any Affiliate of the Developer operating on the Property (collectively, with the Developer, the "**Employers**" and individually an "**Employer**") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the construction of the Project:

(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, 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.

Each Employer shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project and 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, but excluding tenant improvements that are not undertaken by the Developer), 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.

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 The Developer's 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 the (i) Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 *et seq.*, Municipal Code of Chicago (the "**Procurement Program**"), and (ii) Minority-Owned and Women-Owned Business Enterprise Construction Program, Section 2-92-650 *et seq.*, Municipal Code of Chicago (the "**Construction Program**," and collectively with the Procurement Program, the "**MBE/WBE Program**"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this **Section 10.03**, during the course of the Project, at least the following percentages of the MBE/WBE Budget (as these budgeted amounts may be reduced to reflect decreased actual costs) shall be expended for contract participation by MBEs or WBEs:

- i. At least 24 percent by MBEs;
- ii. At least 4 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" as such terms are defined in Section 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 a 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 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 DPD 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 DPD 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 DPD shall have access to all such records maintained by the Developer, on five (5) 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 Section 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) Prior to the commencement of the Project, the Developer, the General Contractor and all major subcontractors shall be required to meet with the monitoring staff of DPD with regard

to the Developer's compliance with its obligations under this **Section 10.03**. During this meeting, the Developer shall demonstrate to DPD its plan to achieve its obligations under this **Section 10.03**, the sufficiency of which shall be approved by DPD. During the Project, the Developer shall submit the documentation required by this **Section 10.03** to the monitoring staff of DPD, 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; and (vii) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that the Developer is not complying with its obligations hereunder shall, upon the delivery of written notice to the Developer, be deemed an Event of Default hereunder. 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, (3) draw on the Performance L/C or (4) seek reimbursement of any City Funds paid to the Developer and exercise 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 applicable Environmental Laws and this Agreement and all Exhibits attached hereto, the Plans and Specifications and all amendments thereto, and the Redevelopment Plan.

Without limiting any other provisions hereof, and except to the extent caused by the gross negligence or intentional acts of the City, 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 all or any portion of the Property or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

## SECTION 12. INSURANCE

The Developer shall provide and maintain, or cause to be provided, at the Developer's or the General Contractor's own expense, during the Term of the Agreement (or as otherwise specified below), the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

(a) Prior to Execution and Delivery of this Agreement and Throughout the Term of the Agreement

(i) Workers Compensation and Employers Liability Insurance

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

(ii) Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall 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.

(b) Construction

(i) Workers Compensation and Employers Liability Insurance

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

(ii) Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, 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) Automobile Liability Insurance (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the General Contractor shall provide 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 bases.

(iv) Railroad Protective Liability Insurance

When any work is to be done adjacent to or on railroad or transit property, General Contractor shall provide, or cause to be provided with respect to the operations that the General Contractor performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy has 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) Builders Risk Insurance

When the General Contractor undertakes any construction, including improvements, betterments, and/or repairs, the General Contractor shall 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 permanent facility. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable. The City of Chicago shall be named as an additional insured and loss payee.

(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

When any remediation work is performed which may cause a pollution exposure, contractor's Pollution Liability shall be provided with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. When policies are renewed, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of one (1) year. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(c) Term of the Agreement

- (i) Prior to the execution and delivery of this Agreement and during construction of the Project, All Risk Property Insurance in the amount of the full replacement value of the Property. The City of Chicago is to be named an additional insured on a primary, non-contributory basis.
- (ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Property owned by Developer. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable. The City of Chicago is to be named an additional insured on a primary, non-contributory basis.

(d) Other Requirements



The Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. 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 the Developer shall not be deemed to be a waiver by the City. The Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this Agreement until proper evidence of insurance is provided.

The insurance shall provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Developer or the General Contractor pursuant to the requirements of subsections (a) or (b) of this **Section 12**, as applicable.

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

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

The Developer expressly understands and agrees that the Developer's or the General Contractor's insurance is primary and any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Developer or the General Contractor under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Developer shall require the General Contractor, and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the General Contractor, or subcontractors. All General Contractors and subcontractors shall be subject to the same requirements (Section (d)) of Developer unless otherwise specified herein.

If the Developer, General Contractor or any subcontractor desires additional coverages, the Developer, General Contractor and any subcontractor shall be responsible for the acquisition and cost of such additional protection.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as any such change does not increase these requirements.

### SECTION 13. INDEMNIFICATION

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

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

(ii) the Developer's or any contractor's failure to pay the General Contractor, 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 gross negligence, wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the

applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this **Section 13.01** shall survive the termination of this Agreement.

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

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

**14.02 Inspection Rights.** Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement. The City will endeavor to maintain the confidentiality of the results of such inspection, subject to the requirements of the Freedom of Information Act.

## **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 under any agreement that would materially, adversely effect the ability of Developer to fulfill its obligations under this Agreement;

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

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

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

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

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

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

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

(i) the dissolution of the Developer; or

(j) Developer's failure to complete the tasks required under this Agreement to obtain a Certificate on or prior to December 31, 2009 or a revised later date as may be approved in writing by the Commissioner, subject to force majeure, or such revised date as is approved in writing by the Commissioner of DPD; or

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

(l) any prohibited sale, lease or transfer of the ownership interests in the Property in violation of **Section 8.01** hereof without the prior written consent of the City, except for the sale of residential units.

For purposes of **Section 15.01(k)** hereof, a person with a material interest in the Developer shall be one owning in excess of twenty percent (20%) of the Developer's membership interests.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, may suspend payments due on the City Note, seek reimbursement from the Developer of any City Funds paid to the Developer, terminate the City Note, or if the Event of Default involves failure to complete the Project, the City may draw on the Performance L/C. In the event that the City chooses to suspend payments due on the City Note, no interest shall accrue on the City Note during the curative period described in **Section 15.03**, unless the Developer complies within the applicable curative period. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein.

**15.03 Curative Period.** In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to perform such monetary covenant within thirty (30) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured, provided, further, that there shall be no cure period under this **Section 15.03** with respect to the Developer's failure to obtain a Certificate by December 31, 2009 (or a revised later date approved in writing by the Commissioner) or the failure to provide a replacement Performance L/C, if required, ten (10) days prior to the then applicable expiry date. For such failures, there shall be no notice requirement and no cure period, and such failure shall constitute an immediate Event of Default.

## 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 (which consent shall not be unreasonably withheld or delayed), 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, those provisions being Sections 8.02 and 8.20.

(b) In the event that any 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 an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure (and the exercise of any such remedy and the transfer of title to the Property or to a mortgagee or any other party in connection with such exercise shall not be subject to the consent of the City or DPD), 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 as to the Property, including, without limitation, providing any Performance L/C; 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, 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, those provisions being Sections 8.02 and 8.20.

(c) Prior to the issuance by the City to the Developer of a Certificate pursuant to **Section 7** hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD, which consent shall not be unreasonably withheld or delayed.

(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 pursuant to the Agreement. With respect to the preceding sentence, under no circumstances shall the Developer or any third party be entitled to rely upon the agreement provided for herein. The failure of the City to deliver such notice shall in no instance alter its rights or remedies under this Agreement.

(e) By virtue of Developer's agreement hereby, the City agrees that it shall accept cure by the mortgagee of an Existing Mortgage in fulfillment of the Developer's obligations, 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) The provisions of this **Section 16** shall not apply to mortgages recorded in connection with the purchase of individual residential units.

## SECTION 17. NOTICE

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

If to the City:

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

With Copies To:

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

If to the Developer: New West Kedzie L.L.C.  
1440 West Taylor Street  
Chicago, Illinois 606107

With Copies To: Marty DeRoin  
122 South Michigan Avenue, Suite 1800  
Chicago, IL 60603

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

## SECTION 18. MISCELLANEOUS

**18.01 Amendment.** This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement **Exhibit D** hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this **Section 18.01** shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in **Sections 10.02** and **10.03** hereof, and subject to the provisions of **Section 3.04** hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer by more than ninety (90) days.

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

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



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

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

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

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

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

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

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

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

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

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

**18.14 Approval.** Wherever this Agreement provides for the approval or consent of the City, DPD or the Commissioner, or any matter is to be to the City's, DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, DPD or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or DPD in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City. In furtherance of the foregoing, the terms of this Agreement may be modified administratively by the Commissioner without the same being deemed an amendment to this Agreement provided that the Commissioner, in consultation with the Corporation Counsel of the City, has determined that such modification is minor, appropriate and consistent with the terms and conditions of this Agreement and the purposes underlying the provisions hereof.

**18.15 Assignment.** Prior to the date which is five (5) years after the issuance of the Certificate, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City, subject to the provisions set forth in **Sections 4.03(b)(iv)** and **8.01(j)** hereof. 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 **Section 8.22** (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

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

section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

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

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

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

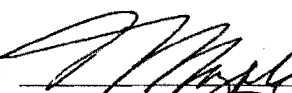
**18.22 Business Relationships.** The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or 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

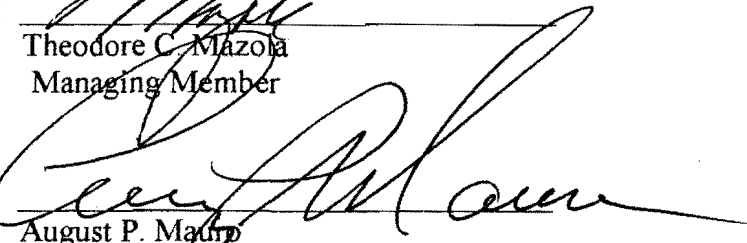
knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

[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.

**NEW WEST KEDZIE LLC,**  
an Illinois limited liability company

By:   
Theodore C. Mazza  
Its: Managing Member

By:   
August P. Mauro  
Its: Managing Member

**CITY OF CHICAGO,** acting by and through its Department of  
Planning and Development

By: \_\_\_\_\_  
Lori T. Healey  
Its: Commissioner


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.

**NEW WEST KEDZIE LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Theodore C. Mazola  
Its: Managing Member

By: \_\_\_\_\_  
August P. Mauro  
Its: Managing Member

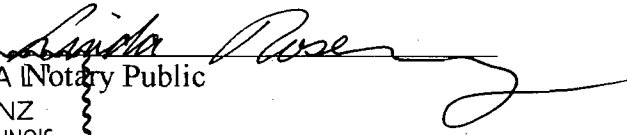
**CITY OF CHICAGO,** acting by and through its Department of  
Planning and Development

By: Lori T. Healey  
Lori T. Healey   
Its: Commissioner

STATE OF ILLINOIS            )  
  ) ss  
COUNTY OF COOK            )

I, Linda Rosencranz, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Theodore C. Mazola, personally known to me to be Managing Member of New West Kedzie L.L.C., an Illinois limited liability company (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 Members 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 10 day of April, 2006.

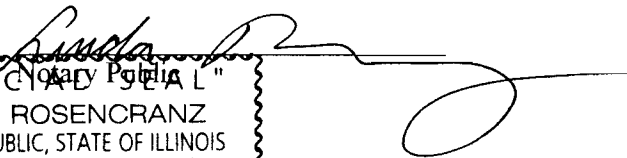
  
"OFFICIAL SEAL" Notary Public  
LINDA ROSENCRANZ  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 11/14/2006  
My Commission Expires \_\_\_\_\_

(SEAL)

STATE OF ILLINOIS            )  
  ) ss  
COUNTY OF COOK            )

I, Linda Rosencranz, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that August P. Mauro, personally known to me to be Managing Member of New West Kedzie L.L.C., an Illinois limited liability company (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 Members 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 10 day of April, 2006.

  
"OFFICIAL SEAL" Notary Public  
LINDA ROSENCRANZ  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 11/14/2006  
My Commission Expires \_\_\_\_\_


(SEAL)

STATE OF ILLINOIS            )

COUNTY OF COOK                    ) ss  
  )

I, Randall T. Butts, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lori T. Healey, 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 11 day of April, 2006.

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

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

(SEAL)





**EXHIBIT A**  
**REDEVELOPMENT AREA**  
(To be attached)

**EXHIBIT B**

**PROPERTY**  
**Legal Description**

**Parcel 1A:**

LOT 1 (EXCEPT THE EAST 63 FEET) LOT 2 (EXCEPT THE EAST 73 FEET) IN BLOCK 3 IN GEORGE K. SHOENBERGER SUBDIVISION OF THE EAST QUARTER OF THE NORTH 40 RODS OF THE SOUTHEAST QUARTER OF SECTION 14 AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 3207 W. Flournoy, 16-14-407-043-0000

**Parcel 1B:**

LOTS 3, 4, 5, 6, 7, 8, 9 AND 10 IN BLOCK 3 IN GEORGE K. SHOENBERGER SUBDIVISION OF THE EAST QUARTER OF THE NORTH 40 RODS OF THE SOUTHEAST QUARTER OF SECTION 14 AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 706 S. Kedzie, 16-14-407-038-0000; 718 S. Kedzie, 16-14-407-039-0000; and 720 S. Kedzie, 16-14-407-040-0000

**Parcel 2:**

LOTS 1, 2, 3 AND 4 AND THE NORTH 17 FEET 1 5/8 INCHES OF LOT 5 IN BLOCK 13 IN E.A. CUMMINGS AND COMPANY'S CENTRAL PARK AVENUE ADDITION, A SUBDIVISION OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13, LYING SOUTH OF THE NORTH 40 RODS THEREOF AND NORTH OF THE NORTH LINE OF THE RIGHT OF WAY OF THE CHICAGO AND GREAT WESTERN RAILROAD, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 734 S. Kedzie, 16-14-411-032-0000

**EXHIBIT B continued**

**Parcel 3:**

THE SOUTH 17 FEET OF LOT 21, AND ALL OF LOTS 22, 23, 24 AND 25 AND THE NORTH 8 FEET OF LOT 26 IN BLOCK 2 IN GEORGE K. SCHOENBERGER'S SUBDIVISION OF THE EAST QUARTER OF THE NORTH 40 RODS OF THE SOUTHEAST QUARTER OF SECTION 14 AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 709 S. Kedzie, 16-13-304-002-0000; 711 S. Kedzie, 16-13-304-003-0000; 713 S. Kedzie, 16-13-304-004-0000

**Parcel 4A:**

LOTS 19, 20, 21, AND 22 IN BLOCK 2 IN P.W. SNOWHOOK'S DOUGLAS PARK ADDITION IN THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 735 S. Kedzie, 16-13-308-001-0000; 737 S. Kedzie, 16-13-308-002-0000; 741 S.,Kedzie, 16-13-308-003-0000; 743 S. Kedzie, 16-13-308-004-0000.

**Parcel 4B:**

LOTS 26, 27 AND 28 IN BLOCK 2 IN P.W. SNOWHOOK'S DOUGLAS PARK ADDITION IN THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 753 S. Kedzie, 16-13-308-008-0000; 755 S. Kedzie, 16-13-308-009-0000; 759 S. Kedzie, 16-13-308-010-0000.

**Parcel 5:**

THE WEST 82 ½ FEET OF LOTS 19 TO 21, ALL OF LOTS 22 AND 23 IN BLOCK 3 IN P.W. SNOWHOOK'S DOUGLAS PARK ADDITION IN THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**EXHIBIT B continued**

Commonly known as: 803 S. Kedzie, 16-13-312-044-0000; 809 S. Kedzie, 16-13-312-002-0000; 811 S. Kedzie, 16-13-312-003-0000.

**Parcel 6:**

LOTS 43, 44, 45, 46 AND 47 IN ELIAS GOBEL'S SUBDIVISION OF BLOCKS 1 AND 2 IN SUBDIVISION OF THE SOUTH 45 ACRES OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 817 S. Kedzie, 16-13-312-046-0000

**Parcel 7A:**

LOT 20 IN THE SUBDIVISION OF BLOCK 3 IN PIPER'S SUBDIVISION OF SOUTH 45 ACRES OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 905 S. Kedzie, 16-13-316-002-0000.

**Parcel 7B:**

LOTS 24, 25, AND 26 IN THE SUBDIVISION OF BLOCK 3 IN PIPER'S SUBDIVISION OF SOUTH 45 ACRES OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 915 S. Kedzie, 16-13-316-006-0000; 917 S. Kedzie, 16-13-316-007-0000; 919 S. Kedzie, 16-13-316-008-0000.

**Parcel 7C:**

LOT 28 IN THE SUBDIVISION OF BLOCK 3 IN PIPER'S SUBDIVISION OF SOUTH 45 ACRES OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 925 S. Kedzie, 16-13-316-010-0000

**EXHIBIT B-1**

**PROPERTY CONVEYED POST CLOSING**

**Legal Description**

LOT 19 IN SUBDIVISION OF BLOCK 3 IN PIPER'S SUBDIVISION OF THE SOUTH 45 ACRES OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 901 South Kedzie Avenue, 16-13-316-001-0000

**EXHIBIT C**

**TIF-FUNDED IMPROVEMENTS**

<u>Line Item</u>	<u>Cost</u>
Land Acquisition	\$ 1,000,001
Site Preparation	785,000
50% of Affordable Units (hard costs only)	1,877,386
Financing Costs (30% or Construction Interest plus fees)	<u>182,100</u>
<b>Total TIF-Eligible Costs</b>	<b>\$ 3,844,487*</b>

\*Notwithstanding the total of TIF-Funded Improvements or the amount of TIF-eligible costs, the assistance to be provided by the City is limited to the amount described in Section 4.03 and shall not exceed \$3,500,000.

**EXHIBIT D**

**REDEVELOPMENT PLAN**

(To be attached at Closing)

**EXHIBIT E**

**CONSTRUCTION CONTRACT**

(To be attached at Closing)



**EXHIBIT F**

ESCROW AGREEMENT

(To be attached at Closing)

## EXHIBIT G

### PERMITTED LIENS

1. Liens or encumbrances against the Property: Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.
2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any: [To be completed by Developer's counsel, subject to City approval.]

## EXHIBIT H-1

### PROJECT BUDGET

<u>Project Activities</u>	<u>Costs</u>
Land Acquisition	\$ 1,000,001
Site Preparation	785,000
Hard Construction Costs	13,291,813
Hard Cost Contingency (5%)	253,504
Architect, Engineering, Inspecting Architect	630,000
General Contractor	1,774,152
Project Mngt/Developer Fee (3%of sales)	629,814
Marketing	700,000
Market Study	8,500
Interest Expenses, General	804,901
Real Estate Taxes & Assessments (during construction)	52,000
Acquisition/Bridge Interest/Loan Fees/Letter of Credit	155,000
Soil & Environmental Testing	20,000
Survey	16,000
Appraisal	6,000
General Insurance	250,000
Title/Recording/Transfer (acquisition and unit closing)	153,000
Building Permits and Fees	250,000
Legal/Accounting	121,800
Warranty Reserve (for units)	81,600
Soft Cost Contingency (5%)	261,341
<b>TOTAL</b>	<b>\$21,244,426</b>

## EXHIBIT H-2

### MBE/WBE BUDGET

<b>Item</b>	<b>Estimated Cost</b>
Site Preparation	\$ 785,000
Hard Construction Costs	13,291,813
Hard Cost Contingency (5%)	253,504
General Contractor	1,774,152
Architect, Engineering, Inspecting Architect	<u>630,000</u>
<b>Total</b>	<b>\$ 16,734,46</b>

**MBE Total**  $\$16,734,469 * 24\% = \$4,016,273*$

**WBE Total**  $\$16,734,469 * 4\% = \$ 669,379*$

\*The above MBE/WBE dollar value is an estimate. If the actual cost of the above applicable MBE/WBE activities increase, the associated MBE/WBE dollar values will increase accordingly.

**EXHIBIT I**

**APPROVED PRIOR EXPENDITURES**

Land Acquisition	\$960,001
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**EXHIBIT L**

FORM OF CITY NOTE

REGISTERED  
NO. R-1

MAXIMUM AMOUNT  
\$1,750,000.00

UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF COOK  
CITY OF CHICAGO  
TAX INCREMENT ALLOCATION REVENUE NOTE (MIDWEST  
REDEVELOPMENT PROJECT), SERIES 2006

Registered Owner: New West Kedzie, LLC

Interest Rate: \_\_\_% per annum [an annual rate equal to the median rate of a 10-year Treasury bond as published by Bloomberg for 15 business days prior to the date of issuance of the City Note plus 300 basis points, but in no event exceeding nine percent (9%)]

Maturity Date: December 31, 2024

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$1,750,000.00 and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. Accrued but unpaid interest on this Note shall also accrue at the interest rate per year specified above until paid.

Principal of and interest on this Note from the Available Incremental Taxes as defined in the hereinafter defined Redevelopment Agreement) is due March 1 of each year until the earlier of

Maturity or until this Note is paid in full. Payments shall first be applied to interest. The principal of and interest on this Note are payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by the Comptroller of the City, as registrar and paying agent (the "Registrar"), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by check or draft of the Registrar, payable in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal and accrued but unpaid interest will be payable solely upon presentation of this Note at the principal office of the Registrar in Chicago, Illinois or as otherwise directed by the City. The Registered Owner of this Note shall note on the Payment Record attached hereto the amount and the date of any payment of the principal of this Note promptly upon receipt of such payment.

This Note is issued by the City in the principal amount of advances made from time to time by the Registered Owner up to \$1,750,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by the Registered Owner with respect to the acquisition, renovation and redevelopment of certain property known as 709 - 925 South Kedzie Avenue, Chicago, Illinois (the "Project"), which improvements were constructed and installed in connection with the development of approximately 102 new residential units with detached garages and surface parking in the Midwest Tax Increment Financing Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act"), the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance

adopted by the City Council of the City on April 6, 2005 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and conditions under which this Note is issued and secured. THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND IS PAYABLE SOLELY FROM AVAILABLE INCREMENTAL TAXES, AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCES. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OR INTEREST OF THIS NOTE. The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed, plus any outstanding interest then due. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.



This Note is issued in fully registered form in the denomination of its outstanding principal amount. This Note may not be exchanged for a like aggregate principal amount of notes or other denominations.

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

This Note hereby authorized shall be executed and delivered as the Ordinance and the Redevelopment Agreement provide.

Pursuant to Section 15.02 of the Redevelopment Agreement, the City has reserved the right to suspend payments of principal and of interest on this Note upon the occurrence of certain conditions. The City shall not be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing (subject to applicable cure periods). Such rights shall survive any transfer of this Note. The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes and neither the City nor the Registrar shall be affected by any notice to the contrary, unless transferred in accordance with the

provisions hereof.

It is hereby certified and recited that all conditions, acts and things required by law to exist, to happen, or to be done or performed precedent to and in the issuance of this Note did exist, have happened, have been done and have been performed in regular and due form and time as required by law; that the issuance of this Note, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation applicable to the City.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the City Clerk of the City, all as of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Mayor

(SEAL)  
Attest: \_\_\_\_\_  
Deputy City Clerk

CERTIFICATE  
OF  
AUTHENTICATION

Registrar  
and Paying Agent  
Acting City Comptroller of the  
City of Chicago,  
Cook County, Illinois

This Note is described in the  
within mentioned Ordinance and  
is the Tax Increment Allocation  
Revenue Note (Midwest  
Redevelopment Project), Series 2005  
of the City of Chicago, Cook County, Illinois.

\_\_\_\_\_  
Acting City Comptroller

Date: \_\_\_\_\_, 2006

PRINCIPAL PAYMENT RECORD

DATE OF PAYMENT

PRINCIPAL PAYMENT

PRINCIPAL BALANCE DUE

(ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto the within Note and does hereby irrevocably constitute and appoint attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the Note in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

Notice: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY:

ITS:

CERTIFICATE OF EXPENDITURE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
Not to Exceed \_\_\_\_\_ Tax Increment Allocation Revenue Note  
(Midwest Redevelopment Project, Series 200\_)  
(the "Redevelopment Note")

This Certificate is submitted to you, Registered Owner of the Redevelopment Note, pursuant to the Ordinance of the City authorizing the execution of the Redevelopment Note adopted by the City Council of the City on \_\_\_\_\_, 2004 (the "Ordinance"). All terms used herein shall have the same meaning as when used in the Ordinance.

The City hereby certifies that \$ \_\_\_\_\_ is advanced as principal under the Redevelopment Note as of the date hereof. Such amount has been properly incurred, is a proper charge made or to be made in connection with the redevelopment project costs defined in the Ordinance and has not been the basis of any previous principal advance. As of the date hereof, the outstanding principal balance under the Redevelopment Note is \$ \_\_\_\_\_, including the amount of this Certificate and less payment made on the Note.

IN WITNESS WHEREOF, the City has caused this Certificate to be signed on its behalf as of \_\_\_\_\_, \_\_\_\_\_.

CITY OF CHICAGO

By: \_\_\_\_\_  
Commissioner  
Department of Planning and Development

AUTHENTICATED BY:

REGISTRAR