

Contract Summary Sheet

Contract (PO) Number: 16620

Specification Number: 62576

Name of Contractor: EAGLE LIMITED PARTNERSHIP

City Department: PLANNING & DEVELOPMENT

Title of Contract: 5257 S. Ashland

Term of Contract: Start Date: 6/19/2003

End Date: 3/27/2025

Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):
\$311,107.00

Brief Description of Work: 5257 S. Ashland

Procurement Services Contract Area: COMPTROLLER-OTHER

Vendor Number: 51117024

Submission Date:

JAN -2 2008

DESIGNATION OF CARDINAL LIMITED PARTNERSHIP AS PROJECT
DEVELOPER AND AUTHORIZATION FOR EXECUTION OF
REDEVELOPMENT AGREEMENT, ISSUANCE OF CITY
NOTE AND APPROVAL FOR SALE OF PROPERTY
AT 5257 SOUTH ASHLAND AVENUE.

The Committee on Finance submitted the following report:

CHICAGO, February 5, 2003.

To the President and Members of the City Council:

Your Committee on Finance, having had under consideration an ordinance authorizing the execution of a redevelopment agreement and the issuance of a City of Chicago Tax Increment Allocation Revenue Note for the benefit of Cardinal Limited Partnership, amount of note not to exceed \$3 11,107, having had the same under advisement, begs leave to report and recommend that Your Honorable Body Pass the proposed ordinance transmitted herewith.

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

Respectfully submitted,

(Signed) EDWARD M. BURKE,
Chairman.

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

Yeas -- Aldermen Granato, Haithcock, Tillman, Preckwinkle, Hairston, Lyle, Beavers, Stroger, Beale, Pope, Balcer, Frias, Olivo, Burke, T. Thomas, Coleman, L. Thomas, Murphy, Rugai, Troutman, DeVille, Munoz, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Carothers, Wojcik, Suarez, Matlak, Mell, Austin, Colom, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Natarus, Daley, Tunney, Levar, Shiller, Schulter, M. Smith, Moore, Stone -- 50.

Nays -- None.

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

The following is said ordinance as passed:

WHEREAS, Pursuant to an ordinance adopted by the City Council ("City Council") of the City of Chicago (the "City") on March 27, 2002 and published at pages 81473 through 81625 of the *Journal of the Proceedings of the City Council* (the "*Journal*") of such date, a certain redevelopment plan and project (the "Redevelopment Plan") for the 47th/Ashland T.I.F. Redevelopment Project Area (the "Redevelopment Area"), was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/ 11-74.4-1, et seq. (2000 State Bar Edition), as amended (the "Act"); and

WHEREAS, Pursuant to an ordinance adopted by the City Council on March 27, 2002 and published at pages 8 1926 through 8 1639 of the *Journal* of such date, the Redevelopment Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, Pursuant to an ordinance (the "T.I.F. Ordinance") adopted by the City Council on March 27, 2002 and published at pages 81640 through 81652 of the *Journal* of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Redevelopment Area redevelopment project costs (as defined in the Act) incurred pursuant to the Redevelopment Plan; and

WHEREAS, Cardinal Limited Partnership, an Illinois limited partnership ("Developer") presently owns the vacant parcel of land at 5257 South Ashland Avenue; and Developer desires to acquire the three (3) City-owned vacant parcels located at 5233, 5237 and 5239 South Ashland Avenue, respectively (the "City Parcels"); and

WHEREAS, Developer plans to redevelop the City Parcels together with its own parcel by constructing a new, single story, twelve thousand eight hundred (12,800) square foot retail and professional center together with adjacent parking for lease to commercial tenants, with such redevelopment work being collectively defined as the "Project"; and

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

WHEREAS, Pursuant to Resolution 02-CDC-82 adopted by the Community Development Commission of the City of Chicago (the "Commission") on September 10, 2002, the Commission authorized the City's Department of Planning and Development ("D.P.D.") to publish notice pursuant to Section 5/ 11-74.4(c) of the Act of its intention to negotiate a redevelopment agreement with the Developer for the Project and to request alternative proposals for redevelopment of the redevelopment site; and

WHEREAS, D.P.D. published the notice, requested alternative proposals for the redevelopment of the redevelopment site and provided reasonable opportunity for other persons to submit alternative bids or proposals; and

WHEREAS, Since no other responsive proposals were received by D.P.D. for the redevelopment of the redevelopment site within fourteen (14) days after such publication, pursuant to Resolution 02-CDC-82, the Commission has recommended that the Developer be designated as the developer for the Project and that D.P.D. be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer for the Project; and

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

WHEREAS, The City will receive no cash proceeds in exchange for the note (as defined below) to be issued pursuant to this ordinance; now, therefore,

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

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

SECTION 2. The Developer is hereby designated as the developer for the Project pursuant to Section 5/ 11-74.4-4 of the Act.

SECTION 3. The Commissioner of D.P.D. (the "Commissioner") or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement between the Developer and the City in substantially the form attached hereto as Exhibit A and made a part hereof (the "Cardinal L.P. Redevelopment Agreement"), and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the

Cardinal L.P. Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Cardinal L.P. Redevelopment Agreement and supporting documents.

SECTION 4. The City hereby approves the sale of the City Parcels, which are legally described in Exhibit B, to the Developer for the purchase price of Sixty-six Thousand Five Hundred Dollars (\$66,500). The Mayor or his proxy is authorized to execute, and the City Clerk is authorized to attest, a quitclaim deed conveying the City Parcels to the Developer, or to a land trust of which the Developer is the sole beneficiary or to a business entity of which Developer is the sole controlling party or is comprised of the same principal parties.

SECTION 5. The City Council hereby finds that the City is authorized to issue its tax increment allocation revenue obligation in an aggregate amount not to exceed Three Hundred Eleven Thousand One Hundred Seven Dollars (\$3 11,107) for the purpose of paying a portion of the eligible costs included within the Project.

SECTION 6. There shall be borrowed for and on behalf of the City an aggregate amount not to exceed Three Hundred Eleven Thousand One Hundred Seven Dollars (\$3 11,107) for the payment of a portion of the eligible costs included the Project and the note of the City shall be issued up to said amount and shall be designated: "Tax Increment Allocation Revenue Note (Cardinal Limited Partnership Redevelopment Project), Taxable Series A". Registered Note Number R-1 ("Note") shall be for a principal amount not to exceed Three Hundred Eleven Thousand One Hundred Seven Dollars (\$3 11,107). The Note shall be dated the date of delivery thereof, and shall also bear the date of authentication, shall be in fully registered form, shall be in the denomination of the outstanding principal amount thereof and shall become due and payable as provided therein.

The Note shall bear interest at the rate of not to exceed eight and zero-tenths percent (8.0%) per annum computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

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

The seal of the City shall be **affixed** to or a facsimile thereof printed on the Note, and the Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

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

SECTION 7. The City shall cause books (the "Register") for the registration of the Note as provided in this ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the Note. The Registrar shall maintain a list of the names and addresses of the registered owner of the Note. The City is authorized to prepare, and the Registrar shall keep custody of, multiple Note blanks executed by the City for use in the transfer of the Note.

Upon surrender for transfer of the Note at the principal office of the Registrar, duly endorsed by, or accompanied by: (i) a written instrument or instruments of transfer in form satisfactory to the Registrar; (ii) an investment representation in form satisfactory to the City and duly executed by, the registered owner or his attorney duly authorized in writing, and (iii) the written consent of the City evidenced by the signature of the Commissioner (or his or her designee) on the instrument of transfer, the City shall execute and the Registrar shall authenticate, date and deliver in the name of the transferee or transferees, a new fully registered Note of the same maturity, of authorized denomination, for a like aggregate principal amount. The execution by the City of the fully registered Note shall constitute full and due authorization of the Note and the Registrar shall thereby be authorized to authenticate, date and deliver the Note, provided, however, that the principal amount of the Note authenticated by the Registrar shall not exceed the authorized principal amount of the Note less previous retirements. The Registrar shall not be required to transfer or exchange the Note during the period beginning at the close of business on the fifteenth (15th) day of the month immediately prior to the maturity date of the Note nor to transfer or exchange the Note after notice calling the Note for

redemption has been made, nor during a period of five (5) days next preceding mailing of a notice for redemption of principal of the Note. No beneficial interests in the Note shall be assigned, except in accordance with the procedures for transferring the Note described above.

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

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

SECTION 8. The Note shall be prepared in substantially the form attached hereto as Exhibit C.

SECTION 9. Pursuant to the Cardinal L.P. Redevelopment Agreement, the Developer has agreed to perform construction and redevelopment work on the land necessary for the Project. The eligible costs of such construction and redevelopment up to the amount not to exceed Three Hundred Eleven Thousand One Hundred Seven Dollars (\$3 11,107) shall be deemed to be a disbursement of the proceeds of the Note, and the outstanding principal amount of the Note shall be increased by the amount of such advance. The principal amount outstanding of the Note shall be the amount of principal indicated in such Note on its date of issuance, or the sum of advances made pursuant to a form of certificate of expenditure (the "Certificate of Expenditure") executed by the Commissioner (or his or her designee) and authenticated by the Registrar, in accordance with the Cardinal L.P. Redevelopment Agreement, minus any principal amount paid on such Note and other reductions in principal as provided in the Cardinal L.P. Redevelopment Agreement. A Certificate of Expenditure shall not be valid or obligatory under this ordinance unless or until authenticated by the Registrar by manual signature. The City shall not execute Certificates of Expenditure that total in excess of Three Hundred Eleven Thousand One Hundred Seven Dollars (\$3 11,107). Upon execution of a Certificate of Expenditure, the Registrar shall promptly send the Certificate of Expenditure to the Registered Owner and retain a copy with the Register. The Certificates of Expenditure for the Note shall be in substantially the forms attached hereto as Exhibit D.

SECTION 10. The principal of the Note shall be subject to prepayment and redemption at any time, without penalty, as provided in the form of Note attached hereto. As directed by the Commissioner, the Registrar shall proceed with redemptions without further notice or direction from the City.

SECTION 11. The Registrar shall note on the payment schedule attached to the Note the amount of any payment of principal or interest on the Note, including the amount of any redemption, and the amount of any reduction in principal pursuant to the Cardinal L.P. Redevelopment Agreement.

SECTION 12. The Note hereby authorized shall be executed and delivered to the Developer as provided in the Cardinal L.P. Redevelopment Agreement.

SECTION 13. (a) Special Tax Allocation Fund. Pursuant to the T.I.F. Ordinance, the City has created a special fund, designated as the 47th/Ashland Redevelopment Project Area Special Tax Allocation Fund (the "47th/Ashland T.I.F. Fund").

The Treasurer of the City is hereby directed to maintain the 47th/Ashland T.I.F. Fund as a segregated interest-bearing account, separate and apart from the General Fund or any other fund of the City, with a bank which is insured by the Federal Deposit Insurance Corporation or its successor. Pursuant to the T.I.F. Ordinance, all incremental ad valorem taxes received by the City for the Redevelopment Area are to be deposited into the 47th/Ashland T.I.F. Fund.

(b) Cardinal L.P. Developer Account. There is hereby created within the 47th/Ashland T.I.F. Fund a special account to be known as the "Cardinal L.P. Developer Account". The City shall promptly designate and deposit into the Cardinal L.P. Developer Account the incremental taxes defined as the "Available Incremental Taxes" in the Cardinal L.P. Redevelopment Agreement which have been deposited into the 47th/Ashland T.I.F. Fund after the execution and delivery of the Cardinal L.P. Redevelopment Agreement.

(c) Pledge Of Cardinal L.P. Developer Account. The City hereby assigns, pledges and dedicates the Cardinal L.P. Developer Account, together with all amounts on deposit in the Cardinal L.P. Developer Account: (i) to the payment of the Note, subject to the provisions and limitations of the Cardinal L.P. Redevelopment Agreement. Any monies on deposit in the Cardinal L.P. Developer Account that are forfeited pursuant to the terms of the Cardinal L.P. Redevelopment Agreement shall be transferred and deposited in the 47th/Ashland T.I.F. Fund. Upon deposit, the monies on deposit in the Cardinal L.P. Developer Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the 47th/Ashland T.I.F. Fund. All monies on deposit in the Cardinal L.P. Developer Account shall be used to pay the principal of and interest on the Note, at maturity or upon payment or redemption prior to maturity, each in accordance with its terms, which payments from the Cardinal L.P. Developer Account are hereby authorized and appropriated by the City. Upon payment of all

amounts due under the Note in accordance with its respective terms, the amounts on deposit in the Cardinal L.P. Developer Account shall be deposited in the 47th/Ashland T.I.F. Fund of the City and the Cardinal L.P. Developer Account shall be closed.

SECTION 14. The Note is a special limited obligation of the City, and is payable solely from amounts on deposit in the Cardinal L.P. Developer Account (or such other funds in the 47th/Ashland T.I.F. Fund as the City, in its sole discretion, may determine), and shall be a valid claim of the registered owners thereof only against said sources. The Note shall not be deemed to constitute an indebtedness or a loan against the general taxing powers or credit of the City, within the meaning of any constitutional or statutory provision. The registered owner of the Note shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the Note.

SECTION 15. Monies on deposit in the Cardinal L.P. Developer Account may be invested as allowed under Section 2-32-520 of the Municipal Code of the City of Chicago. Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the Note.

SECTION 16. The provisions of this ordinance shall constitute a contract between the City and the registered owner(s) of the Note. All covenants relating to the Note are enforceable by the registered owner(s) of the Note.

SECTION 17. The Mayor, the Comptroller, the City Clerk, the Commissioner (or his or her designee) and the other officers of the City are authorized to execute and deliver on behalf of the City such other documents, agreements and certificates and to do such other things consistent with the terms of this ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this ordinance.

SECTION 18. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 19. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 20. This ordinance shall be in full force and effect immediately upon its passage.

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

Signed
ORIGINAL
circled

**47TH / ASHLAND
REDEVELOPMENT PROJECT AREA
CARDINAL LIMITED PARTNERSHIP
REDEVELOPMENT AGREEMENT**

DATED AS OF JUNE 19, 2003

BY AND BETWEEN

THE CITY OF CHICAGO

AND

CARDINAL LIMITED PARTNERSHIP,
an Illinois Limited Partnership

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

**CARDINAL LIMITED PARTNERSHIP
REDEVELOPMENT AGREEMENT
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**CARDINAL LIMITED PARTNERSHIP
REDEVELOPMENT AGREEMENT
LIST OF SCHEDULES AND EXHIBITS**

Schedules

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Schedule B	Insurance Requirements

Exhibits

Exhibit A	*Redevelopment Area Legal Description
Exhibit B-1	*Legal Description of the Property (including Acquired Property)
Exhibit B-2	*Legal Description of the Acquired Property
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Exhibit D-1	*Project Budget
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Exhibit J	*Preliminary TIF Projection -- Real Estate Taxes
Exhibit K	Form of Payment and Performance Bond
Exhibit L	Public Benefits Program
Exhibit M	Form of Note and related Certificate of Expenditure

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

[leave blank 3" x 5" space for recorder's office]

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

CARDINAL LIMITED PARTNERSHIP REDEVELOPMENT AGREEMENT

This Cardinal Limited Partnership Redevelopment Agreement (the "**Agreement**") is made as of this 19th day of June, 2003, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and Cardinal Limited Partnership, an Illinois limited partnership ("**Developer**").

RECITALS:

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

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (2000 State Bar Edition), as amended from time-to-time (the "**Act**"), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

C. **City Council Authority:** To induce redevelopment under the provisions of the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on March 27, 2002: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the 47th/Ashland Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the 47th/Ashland Redevelopment Project Area as a Redevelopment Project Area Pursuant to Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the 47th/Ashland Redevelopment Project Area" (the "**TIF Adoption Ordinance**"). Collectively the three ordinances are defined as the "**TIF Ordinances**". The redevelopment project area (the "**Redevelopment Area**") is legally described in Exhibit A.

D. **The Project:** Developer presently owns the 22,000 square foot parcel at 5257 South Ashland Avenue, which was formerly the site of an Amoco service station. On the Closing Date, Developer plans to acquire 3 City-owned lots located at 5233, 5237 and 5239 South Ashland Avenue, respectively. Collectively, all the South Ashland Avenue parcels presently owned by each of Developer and the City are defined as the "**Property**". A legal description of the Property is stated in Exhibit B-1. Developer plans to construct a new, single story, 12,800 square foot retail and professional center together with adjacent parking on the Property (the "**Project**"). Upon completion, the Project will be owned by Developer. Developer will operate the Project and lease space to commercial tenants. 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 47th/Ashland Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project dated September 26, 2001 and revised January 30, 2002 (the "**Redevelopment Plan**") attached as Exhibit C, as amended from time-to-time.

F. **City Financing and Assistance:** Subject to the terms and conditions of this Agreement, the City will issue the Note to the Developer in the amount stated in Section 4.03. The City will make payments of principal and interest on the Note to reimburse Developer out of Available Incremental Taxes for the cost of TIF-Funded Improvements. In addition, the City may, in its discretion, issue tax increment allocation bonds ("**TIF Bonds**") secured by Incremental Taxes (as defined below) as provided in a TIF bond ordinance (the "**TIF Bond Ordinance**"), at a later date as described and conditioned in Section 4.06. The proceeds of the TIF Bonds (the "**TIF Bond Proceeds**") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Available Incremental Taxes, including any such payment made under the Note provided to Developer under this Agreement, or in order to reimburse the City for the costs of TIF-Funded Improvements.

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

AGREEMENT:

ARTICLE ONE: INCORPORATION OF RECITALS

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

ARTICLE TWO: DEFINITIONS

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

ARTICLE THREE: THE PROJECT

3.01 **The Project.** The Developer will: (i) begin redevelopment construction no later than November 1, 2003, and (ii) complete redevelopment construction (including but not limited to completion of the Public Benefits Program) no later than November 1, 2004, subject to the provisions of Section 18.16 (Force Majeure).

3.02 **Scope Drawings and Plans and Specifications.** Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved them or DPD has agreed to approve them as a post-closing item. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications within the scope of Section 3.04 will be submitted to DPD as a Change Order under Section 3.04. The Scope Drawings and Plans and Specifications will at all times conform to the Redevelopment Plan as in effect on the date of this Agreement, and all applicable Federal, State and local laws, ordinances and regulations. Developer will submit all necessary documents to the City's Department of Buildings, Department of Transportation, and to such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 **Project Budget.** Developer has furnished to DPD, and DPD has approved, a Project Budget which is Exhibit D-1, showing total costs for the Project in an amount not less than \$1,651,200. Developer hereby certifies to the City that: (a) it has Lender Financing and/or Equity in an aggregate amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. Developer will promptly deliver to DPD copies of any Change Orders with respect to the Project Budget as provided in Section 3.04.

3.04 **Change Orders.**

(a) Except as provided in subparagraph (b) below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by Developer to DPD concurrently with the progress reports described in Section 3.07; provided, however, that any Change Orders relating to any of the following must be submitted by Developer to DPD for DPD's prior written approval: (i) a reduction by more than five percent (5%) in the square footage of the Project, or (ii) a change in the basic use of the planned retail and professional center, or (iii) a delay in the Project completion date. DPD will respond to Developer's request for written approval within 30 days from receipt of such request. Developer will not authorize or permit the performance of any work relating to any Change Order requiring DPD's prior written approval or the furnishing of materials in connection therewith prior to the receipt by Developer of DPD's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, will contain a provision to this effect. An approved Change Order will not be deemed to imply any obligation on the part of the City to increase the amount of City Funds or to provide any other additional assistance to Developer.

(b) Notwithstanding anything to the contrary in this Section 3.04, Change Orders costing less than Fifty Thousand Dollars (\$50,000) each, to an aggregate amount of Five Hundred Thousand (\$500,000), do not require DPD's prior written approval as stated in this Section 3.04, but DPD must be notified in writing of all such Change Orders and Developer, in connection with such notice, must identify to DPD the source of funding therefor in the progress reports described in Section 3.07.

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

3.06 **Other Approvals.** Any DPD approval under this Agreement will have no effect upon, nor will it operate as a waiver of, Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals).

3.07 **Progress Reports and Survey Updates.** After the Closing Date, on or before the 15th day of each reporting month, Developer will provide DPD with written quarterly construction progress reports detailing the status of the Project, including a revised completion date, if necessary (with any delay in completion date being considered a Change Order, requiring

DPD's written approval under Section 3.04). Developer must also deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Section 8.08 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment). If the reports reflect a shortfall in compliance with the requirements of Sections 8.08, 10.02 and 10.03, then there must also be included a written plan from Developer acceptable to DPD to address and cure such shortfall. At Project completion, upon the request of DPD, Developer will provide 3 copies of an updated Survey to DPD reflecting improvements made to the Property.

3.08 **Reserved**

3.09 **Barricades**. Prior to commencing any construction requiring barricades, Developer will install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable Federal, State or City laws, ordinances, rules and regulations. DPD retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content, and design of all barricades (other than the name and logo of the Project).

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

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

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

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

ARTICLE FOUR: FINANCING

4.01 **Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$1,651,200 to be applied in the manner stated in the Project Budget. Such costs will be funded from the following sources:

Equity (subject to <u>Section 4.05</u>)	\$ 551,200
Lender Financing	1,100,000
	<hr/>
ESTIMATED TOTAL	\$1,651,200

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

4.03 City Funds.

(a) Uses of City Funds.

(i) Any principal or interest paid under the Note, and any other funds expended by the City under this Agreement or otherwise related to the Project or to the TIF-Funded Improvements are defined as “**City Funds**”.

(ii) City Funds may be used to reimburse Developer only for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit E states, by line item, the TIF-Funded Improvements for the Project contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such costs and their respective eligibility as a Redevelopment Project Cost. Reimbursement of costs through City Funds will be in the form of payment of principal and interest under the Note. The City may redeem all or any portion of the Note without premium or penalty at any time.

(iii) Developer acknowledges and agrees that no payments of principal or interest on the Note will be made by the City until:

(A) The City has issued a Certificate of Occupancy for the Project, or Developer has certified in writing to DPD, and DPD has verified, that the Project (not including tenant improvements) has been completed, whichever first occurs; and

(B) At least 9,600 square feet of the rentable Project space has been leased; and

(C) The City has issued its Certificate under Section 7.01; and

(D) The Project has been partially or fully re-assessed by the Cook County Assessor's Office such that Available Incremental Taxes have been generated.

(b) Sources of City Funds.

(i) Issuance of the Note. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Article Five, when the City issues the Certificate for the Project as provided in Section 7.01, the City will also issue the Note in the face amount of up to a maximum of \$311,107. The principal amount at date of issue of the Note will be the lesser of \$311,107 or 19% of the total Project costs. Developer acknowledges that once the Project is complete, all final Project costs are known and verified by the City, and the City verifies that the Project is ready to receive the Certificate, that the principal amount of the Note could be reduced (perhaps substantially) if Project costs are less than the \$1,651,200 Project Budget stated in Exhibit D-1.

(ii) Note Terms. The terms of the Note will be as follows:

(A) Establishing Principal. The principal amount of the Note will be established after the Closing Date as determined by the Certificate(s) of Expenditure issued by the City in the form of Exhibit M, upon Developer providing satisfactory evidence of expenditures for TIF-Funded Improvements and compliance with the applicable requirements and terms and conditions of this Agreement. As stated in Section 4.03(b)(i), the principal amount at date of issue of the Note will be adjusted to be the lesser of \$311,107 or 19% of total Project costs.

(B) Interest. The interest rate for the Note will be 8.0% per annum. Interest on the outstanding principal amount will begin to accrue on the date of issuance of the Note (as to the outstanding principal amount of the Note as of its issuance date). Unpaid interest will also bear interest at the 8.0% per annum rate.

(C) Payment of Principal and Interest.

(i) Except as may be otherwise provided in this Agreement, Available Incremental Taxes only will be used to pay the principal of and interest on the Note and on unpaid interest, if any. In the ordinance authorizing the issuance of the Note, the City will establish an account denominated the: "Cardinal LP Developer

Account” within the 47th/Ashland Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the Cardinal LP Developer Account.

(ii) After the principal and interest on the Note has been paid in full and the Note canceled according to its terms, and any applicable Pay-As-You-Go Amount (as defined below) has been paid, then the Cardinal LP Developer Account will be closed and all subsequent Available Incremental Taxes will be deposited by the City in the 47th/Ashland Redevelopment Project Area Special Tax Allocation Fund.

(iii) The Note will be repaid based on a 20-year amortization schedule (which amortization period will commence on the date of issuance of the Note), with the first payment due on the February 1 following the date of the Certificate issued under Section 7.01 only if all the preconditions to payment listed in Section 4.03 (a) (iii) have been met.

(D) Insufficient Available Incremental Taxes. If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any scheduled payment on the Note, then: (1) the City will not be in default under this Agreement on the Note, and (2) due but unpaid scheduled payments (or portions thereof) on the Note will be paid as provided in this Section 4.03 as promptly as funds become available for their payment. Interest at 8.0% per annum will accrue on any principal or interest payments which are unpaid because of insufficient Available Incremental Taxes.

(E) Pay-As-You-Go Reimbursement. If after the Project completion, and all redevelopment costs are known and verified by the City, the City-approved amount of costs of TIF-Funded Improvements that constitute Redevelopment Project Costs may be less than the maximum \$311,107 amount of the Note. Such difference in amount is defined as the “**Pay-As-You-Go Amount**”. In such event, the City agrees to reimburse Developer out of Available Incremental Taxes for 30% of the annual construction and permanent financing interest costs incurred by Developer after the Closing Date up to the value of the Pay-As-You-Go Amount. The Pay-As-You-Go Amount (if any) is to be paid before the Note payments. Payments on the principal of the Note will be deferred and interest will accrue until such time as the value of the Pay-As-You-Go Amount has been paid to the Developer. After such payments to Developer, the Note payments will resume according to the Note terms.

(F) Change in Project. If the Developer vacates the Project, or sells or leases the Project for a use not in compliance with the Redevelopment Plan or applicable zoning laws, then the City may terminate any payments due under the Note and cancel the Note.

(G) Low Occupancy.

(1) For More Than 12 Consecutive Months. If the occupancy rate for the Project falls below 9,600 square feet for more than 12 consecutive months (a "**Low Occupancy Period**"), then the City may elect to withhold all payments of City Funds to Developer beginning in month 13 until the earlier to occur of: (A) month 18 or (B) an occupancy rate for the Project above 9,600 square feet.

(2) Developer Cure. If a Low Occupancy Period occurs, and Developer raises the occupancy rate in the Project above 9,600 square feet, then any withheld City Funds will be paid by the City to Developer within 30 days after the City verifies the Project's occupancy rate.

(3) Multiple Low Occupancy Periods. After the occurrence of 3 Low Occupancy Periods, the City may retain the withheld City Funds applicable to the third Low Occupancy Period for general use in 47th/Ashland Redevelopment Project Area TIF Fund and Developer will have no claim to such retained City Funds.

(4) Low Occupancy for 18 Consecutive Months or More. If a Low Occupancy Period exists for 18 consecutive months, then the City may declare the Developer in default under this Agreement and cancel the Note and cancel Developer's right to otherwise receive City Funds under this Agreement. If the City elects to cancel the Note, the City will have no obligation to pay any accrued but unpaid interest on the Note.

4.04 Treatment of Prior Expenditures. Only those expenditures made by Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, will be considered previously contributed Equity or Lender Financing, if any, hereunder (the "**Prior Expenditure(s)**"). DPD has the right, in its sole discretion, to disallow any such expenditure (not listed on Exhibit G) as a Prior Expenditure as of the date hereof. Exhibit G states the prior expenditures approved by DPD as Prior Expenditures. Prior Expenditures made for items other

than TIF-Funded Improvements will not be reimbursed to Developer, but will reduce the amount of Equity and/or Lender Financing, if any, required to be contributed by Developer under Section 4.01.

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

4.06 **TIF Bonds.** The Commissioner of DPD may, in his or her sole discretion, recommend that the City Council approve an ordinance or ordinances authorizing the issuance of TIF Bonds in an amount which, in the opinion of the City Comptroller, is marketable under the then current market conditions. The proceeds of TIF Bonds may be used to pay the outstanding principal and accrued interest (through the date of prepayment) under the Note and for other purposes as the City may determine. The costs of issuance of the TIF Bonds would be borne solely by the City. Developer will cooperate with the City in the issuance of the TIF Bonds, as provided in Section 8.05.

4.07 **Sale of 3 City-Owned Real Property Parcels.** The City agrees to sell and Developer agrees to purchase the lots located at 5233, 5237 and 5239 South Ashland Avenue, respectively (the "**Acquired Property**"), and legally described in Exhibit B-2, for \$66,500 total purchase price comprised of \$3,325 in Developer's earnest money on deposit with the City and \$63,175 cash from Developer at Closing, subject to the following terms and conditions:

(a) **Form of Deed.** The City will convey the Acquired Property to the Developer by quit claim deed ("**Deed**"), 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) Taxes which are not yet due and owing.
- (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 Acquired Property.

(b) **Title Commitment and Insurance.** The City agrees to provide the Developer with a current title commitment issued by Chicago Title Insurance Company

showing the City in title to the Acquired Property. The Developer will pay the cost of, and will be responsible for, obtaining any title insurance, extended coverage or endorsements it deems necessary.

(c) Survey. The Developer will be responsible for any survey it deems necessary.

(d) Real Estate Taxes. The City agrees to obtain the waiver of any delinquent real estate tax liens on the Acquired Property. The Developer will be responsible for all taxes accruing after the Closing.

(e) Recordation of Deed. The Developer, at its expense, will promptly record the Deed at the Office of the Cook County Recorder of Deeds.

4.08 Environmental Matters Concerning the Acquired Property.

(a) The City makes no covenant, representation or warranty as to the environmental condition of the Acquired Property or the suitability of the Acquired Property for any purpose whatsoever, and the Developer agrees to accept the Acquired Property "as is".

(b) It is responsibility of the Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Acquired Property. Prior to the Closing, the Developer will have the right to request a right of entry for the purpose of conducting environmental tests on the Acquired Property. If such a request is made, the City will grant the Developer a right of entry for such purpose. The granting of the right of entry, however, will be contingent upon the 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 Acquired 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 Acquired Property. The Developer will deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. The Developer expressly understands and agrees that any coverage and limits furnished by the Developer will in no way limit the Developer's liabilities and responsibilities stated in this Agreement.

(c) The Developer agrees to carefully inspect the Acquired Property prior to the commencement of any activity on the Acquired Property to make sure that such activity will not damage surrounding property, structures, utility lines or any subsurface lines or cables. The 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 Acquired Property. The Developer's activities on the Acquired 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, the Developer agrees to restore the Acquired Property to its original condition. The Developer will keep the Acquired Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Developer, and agrees to indemnify and hold the City harmless against any such liens.

(d) The Developer agrees to deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Acquired Property. If prior to the Closing, the Developer's environmental consultant determines that contamination exists on the Acquired 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 the Developer, the Developer may declare these Real Estate Purchase Sections (Sections 4.07 and 4.08) null and void by giving written notice thereof to the City. The Developer agrees that a request to terminate the Real Estate Purchase Sections will not be made until all reports concerning the condition of the Acquired Property have been reviewed by the City.

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

ARTICLE FIVE: CONDITIONS PRECEDENT

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

5.01 **Project Budget.** Developer will have submitted to DPD, and DPD will have approved, a Project Budget in accordance with the provisions of Section 3.03.

5.02 **Scope Drawings and Plans and Specifications.** Developer will have submitted to DPD, and DPD will have approved, the Scope Drawings and Plans and Specifications as provided in Section 3.02 or DPD has agreed to approve them as a post-closing item.

5.03 **Other Governmental Approvals.** Not less than 5 Business Days prior to the Closing Date, Developer will have secured or applied for all other necessary approvals and permits required by any Federal, State, or local statute, ordinance, rule or regulation to begin or continue construction of the Project, and will submit evidence thereof to DPD.

5.04 **Financing.**

(a) Developer will have furnished evidence acceptable to the City that Developer has Equity and Lender Financing, if any, at least in the amounts stated in Section 4.01 to complete the Project and satisfy its obligations under this Agreement. If a portion of such financing consists of Lender Financing, Developer will have furnished evidence as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with the Equity and other financing sources, if any, stated in Section 4.01) to complete the Project.

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

(c) Any financing liens against the Project in existence at the Closing Date will be subordinated to certain encumbrances of the City stated in this Agreement under 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 Developer, in the Office of the Recorder of Deeds of Cook County.

(d) The City agrees that the Note may be assigned on a collateral basis to any lender or lenders providing Lender Financing, if any.

5.05 **Acquisition and Title.** On the Closing Date, Developer will furnish the City with a copy of the Title Policy for the Property, showing Developer as the named insured. The Title Policy will be dated as of the Closing Date and will contain only those title exceptions listed as Permitted Liens on Exhibit H and will evidence the recording of this Agreement under the provisions of Section 8.17. The Title Policy will also contain the following endorsements as required by Corporation Counsel: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access, and survey.

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

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

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

5.07 **Surveys.** Not less than 5 Business Days prior to the Closing Date, Developer will have furnished the City with 3 copies of the Survey.

5.08 **Insurance.** Developer, at its own expense, will have insured the Site as required under Article Twelve. At least 5 Business Days prior to the Closing Date, certificates required under Article Twelve evidencing the required coverages will have been delivered to DPD.

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

5.10 **Evidence of Prior Expenditures.** Not less than 20 Business Days prior to the Closing Date, Developer will have provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures as provided in Section 4.04. Such evidence of Prior Expenditures may be updated to the Closing Date by Developer.

5.11 **Financial Statements.** Not less than 30 days prior to the Closing Date, Developer will have provided Financial Statements to DPD for its 2001 and 2002 fiscal years, if available, and its most recently available unaudited interim Financial Statements.

5.12 **Additional Documentation.** Developer will have provided documentation to DPD, satisfactory in form and substance to DPD concerning Developer's employment profile and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds in the Project, if any.

5.13 **Environmental Audit.** Not less than 30 days prior to the Closing Date, Developer will have provided DPD with copies of all phase I environmental audits completed with respect to the Property, if any. Prior to the Closing Date, Developer will provide the City

with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits. If environmental issues exist on the Property, the City will require written verification from the Illinois Environmental Protection Agency that all identified environmental issues have been or will be resolved to its satisfaction.

5.14 **Entity Documents.** Developer will provide a copy of its current Certificate of Limited Partnership, with all amendments, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such other organizational documentation as the City may request.

5.15 **Litigation.** Developer will provide to Corporation Counsel and DPD, at least 10 Business Days prior to the Closing Date, a description of all pending or threatened litigation or administrative proceedings involving the Developer or any Affiliate of 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 **Preconditions of Accepting Certificates of Expenditure.** Prior to the acceptance by DPD of any Certificate of Expenditure under the Note, Developer must submit to DPD documentation of such expenditures (in the form of waivers of lien, canceled checks, closing statements, or such other documentation as DPD may reasonably require), which will be satisfactory to DPD. Delivery by Developer to DPD of any Certificate of Expenditure hereunder will, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

(a) the total amount of the disbursement request represents the actual amount payable to (or paid to) the General Contractor and/or subcontractors for work performed on the Project, and/or their payees;

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

(c) Developer has approved all work and materials for the current certificate and, to the reasonable belief of Developer, such work and materials conform to the Plans and Specifications;

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

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

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

(g) the particular phase of the Project is In Balance. The particular phase of the Project will be deemed to be in balance (“**In Balance**”) only if the total of the available Project funds for such phase equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of such phase of the Project. “**Available Project Funds**” as used herein means: (i) the undisbursed Lender Financing, if any; (ii) the undisbursed Equity; and (iii) any other amounts deposited by Developer under this Agreement. Developer agrees that, if the particular phase of the Project is not In Balance, Developer will, within 10 days after a written request by the City, deposit either with the lender providing any of the Lender Financing or with the construction escrow agent, cash in an amount that will place the particular phase of the Project In Balance, which deposit shall first be exhausted upon the request of such lender before any further acceptance of a Certificate of Expenditure shall be made.

The City will not execute any Certificate of Expenditure for the Note unless Developer has satisfied the City that Developer has complied, or is implementing a plan to comply, with the requirements of Sections 8.08, 10.02 and 10.03. The City will have the right, in its reasonable discretion, to require 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 acceptance of a Certificate of Expenditure by the City will be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct. In addition, Developer will have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements not inconsistent with this Agreement and stated in the TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, the Note, and this Agreement.

ARTICLE SIX: AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors.

(a) Prior to entering into an agreement with a General Contractor or any subcontractor for construction of the TIF-Funded Improvements, (or any phase thereof) the Developer must solicit, or must cause the General Contractor to solicit, bids from qualified contractors eligible to do business with the City of Chicago, and must submit all bids received to DPD for its inspection and written approval. For the TIF-Funded Improvements, the Developer must select the General Contractor (or must cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Project (or phase thereof) in a timely and good and workmanlike 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.

(b) The Developer must submit copies of the Construction Contract to DPD as required under Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements must be provided to DPD within five (5) Business Days of the execution thereof. The Developer must ensure that the General Contractor

will not (and must cause the General Contractor to ensure that the subcontractors will not) begin work on the Project (or any phase thereof) until the applicable Plans and Specifications for that phase have been approved by DPD and all requisite permits have been obtained.

(c) Developer's contracts for remediation and demolition at the Property are not subject to the requirements in this Section 6.01. Also, construction work performed solely by tenants in the Project, but paid for in whole or in part by Developer through lease incentives ("**Tenant Allowances**") is not subject to the requirements in this Section 6.01.

6.02 **Construction Contract.** Prior to the execution thereof, the Developer must deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to work on the TIF-Funded Improvements under Section 6.01 above, for DPD's prior written approval. Within 10 Business Days after execution of such contract by the Developer, the General Contractor and any other parties thereto, the Developer must deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

6.03 **Performance and Payment Bonds.** Prior to commencement of construction of any work in the public way, Developer will require that the General Contractor and any applicable subcontractor(s) be bonded (as to such work in the public way) for their respective payment and performance by sureties having an AA rating or better using the bond form attached as Exhibit K. The City will be named as obligee or co-obligee on such bond.

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

6.05 **Other Provisions.** In addition to the requirements of this Article Six, the Construction Contract and each contract with any subcontractor must contain provisions required under Section 3.04 (Change Orders), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement), Section 10.03 (Developer's MBE/WBE Commitment), Article Twelve (Insurance) and Section 14.01 (Books and Records).

ARTICLE SEVEN: COMPLETION OF CONSTRUCTION

7.01 **Certificate of Completion of Construction.** Upon completion of the construction of the Project in compliance with the terms and conditions of this Agreement, and upon Developer's written request, DPD will issue to Developer a certificate of completion of construction in recordable form (the "**Certificate**") certifying that Developer has fulfilled its obligation to complete the Project in compliance with the terms and conditions of this Agreement. DPD will respond to Developer's written request for a Certificate within 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 Developer in order to obtain the Certificate. Developer may resubmit a written request for a Certificate upon completion of such measures, and the City will respond within 30 days in the same way as the procedure for the initial request. Such process may repeat until the City issues a Certificate.

7.02 Effect of Issuance of Certificate; Continuing Obligations.

(a) The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to 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 must not be construed as a waiver by the City of any of its rights and remedies under such executory terms.

(b) Those covenants specifically described at Section 8.02 (Covenant to Redevelop) and Section 8.18 (Real Estate Provisions) 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 (except with respect to Section 8.02). The other executory terms of this Agreement that remain after the issuance of a Certificate will be binding only upon Developer or a permitted assignee of Developer who, as provided in Section 18.14 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

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

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

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

(c) the right to seek reimbursement of the City Funds from Developer, provided that the City is entitled to rely on an opinion of counsel that such reimbursement will not jeopardize the tax-exempt status, if any, of any TIF Bonds.

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

ARTICLE EIGHT: REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.

8.01 **General.** Developer represents, warrants, and covenants, as of the date of this Agreement and as of the date of issuance of the Note, that:

- (a) Developer is an Illinois limited partnership, duly organized, validly existing and qualified to do business in Illinois;
- (b) Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement or has otherwise applied for permits and approvals required to complete the Project;
- (c) the execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary limited partnership action, and does not and will not violate its Certificate of Limited Partnership as amended and supplemented, its by-laws, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Developer is now a party or by which Developer or any of its assets is now or may become bound;
- (d) Developer has acquired and will maintain good, indefeasible and merchantable fee simple title to the Property (and improvements) free and clear of all liens except for the Permitted Liens or Lender Financing, if any, as disclosed in the Project Budget;
- (e) Developer is now, and for the Term of the Agreement, will remain solvent and able to pay its debts as they mature;
- (f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending or, to Developer's actual knowledge threatened or affecting Developer which would impair its ability to perform under this Agreement;
- (g) Developer has or will acquire as necessary and will 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) Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which Developer or any of its assets is bound which would materially adversely effect its ability to comply with its obligations under this Agreement;

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

(j) prior to the issuance of a Certificate, if it would materially adversely affect Developer's ability to perform its obligations under this Agreement, Developer will not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose (directly or indirectly) of all or substantially all of its assets or any portion of the Property or the Project (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition;

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

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

8.02 Covenant to Redevelop. Upon DPD's approval of the Scope Drawings and Plans and Specifications, and the Project Budget as provided in Sections 3.02 and 3.03, and Developer's receipt of all required building permits and governmental approvals, Developer will redevelop the Property in compliance with this Agreement, the TIF Ordinances, the Scope Drawings, the Plans and Specifications, the Project Budget and all amendments thereto, and all Federal, State and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project and/or Developer. The covenants set forth in this Section 8.02 will run with the land and will be binding upon any transferee, until fulfilled as evidenced by the issuance of a Certificate.

8.03 Redevelopment Plan. Developer represents that the Project is and will be in compliance with all applicable terms of the Redevelopment Plan, as in effect on the date hereof.

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

8.05 **Other Bonds.** At the request of the City, Developer will, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole and absolute discretion) TIF Bonds or other bonds (“**Bonds**”) in connection with the Project or the Redevelopment Area, the proceeds of which are to be used to reimburse the City for expenditures made in connection with the TIF-Funded Improvements; provided, however, that any such amendments will not have a material adverse effect on Developer or the Project. Developer will cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition, and assisting the City in its preparation of an offering statement with respect thereto. Developer will not have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by Developer that is determined to be false and misleading.

8.06 **Employment Opportunity.**

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

(b) Developer will deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Sections 8.08, 10.02 and 10.03 of this Agreement. If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to DPD which will outline, to DPD’s satisfaction, the manner in which Developer will correct any shortfall.

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

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

8.09 **Arms-Length Transactions.** Unless DPD has have given its prior written consent with respect thereto, no Affiliate of Developer may receive any portion of City Funds,

directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. Developer will provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to an Affiliate by Developer and reimbursement to Developer for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement.

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

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

8.12 **Financial Statements.** If requested by DPD, Developer will obtain and provide to DPD Financial Statements for Developer's fiscal year ended 2001 or 2002, as applicable, and each yearly thereafter for the Term of the Agreement. In addition, if requested by DPD, Developer will submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

8.13 **Insurance.** Solely at its own expense, Developer will comply with all provisions of Article Twelve hereof.

8.14 **Non-Governmental Charges.**

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

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charges by appropriate legal proceedings properly and diligently instituted

and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charges, prevent the imposition of a lien or remove such lien, or prevent the transfer or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charges at the time and in the manner provided in this Section 8.14);
or

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

8.15 Developer's Liabilities. Developer will not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement. Developer will immediately notify DPD of any and all events or actions which may materially affect Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements related to this Agreement or the Project.

8.16 Compliance with Laws.

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

(b) Covenant. Developer covenants that the Property and the Project will be operated and managed in compliance with all applicable Federal, State and local laws, Statutes, ordinances, rules, regulations, executive orders and codes. Upon the City's request, Developer will provide evidence to the City of its compliance with this covenant.

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

8.18 **Real Estate Provisions.**

(a) **Governmental Charges.**

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

(ii) **Right to Contest.** Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or transfer or forfeiture of the Property. Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in **Section 8.18(c)** below; **provided, that** such real estate taxes must be paid in full when due and may be disputed only after such payment is made. No such contest or objection will be deemed or construed in any way as relieving, modifying or extending Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless Developer has given prior written notice to DPD of Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option:

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

(y) Developer will furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD may require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or transfer or forfeiture of the 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 Developer fails to pay or contest any Governmental Charge or to obtain discharge of the same, Developer will advise DPD thereof in writing, at which time DPD may, but will not be obligated to, and without waiving or releasing any obligation or liability of 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, will be promptly disbursed to DPD by Developer. Notwithstanding anything contained herein to the contrary, this paragraph must not be construed to obligate the City to pay any such Governmental Charge. Additionally, if Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require Developer to submit to the City audited Financial Statements at Developer's own expense.

(c) Real Estate Taxes.

(i) Acknowledgment of Real Estate Taxes. Developer agrees that: (A) for the purposes of this Agreement, the total projected minimum assessed value of the Property (and related improvements) ("**Minimum Assessed Value**") is shown on Exhibit J for the years noted on Exhibit J; (B) Exhibit J sets forth the specific improvements which will generate the fair market values, assessments, equalized assessed values and taxes shown thereon; and (C) the real estate taxes anticipated to be generated and derived from the respective portions of the Project for the years shown are fairly and accurately indicated in Exhibit J.

(ii) Real Estate Tax Exemption. With respect to the Property (and related improvements) or the Project, neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will, during the Term of this Agreement, seek or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect.

(iii) No Reduction in Real Estate Taxes. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in Exhibit J for the applicable year.

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

(v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.18(c) are covenants running with the land. This Agreement

will be recorded by Developer as a memorandum thereof, at Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions will be binding upon Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants will be released when the Redevelopment Area is no longer in effect. Developer agrees that any sale, transfer, lease, conveyance, or transfer of title to all or any portion of the Property or the Redevelopment Area from and after the date hereof must be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.18 (c) to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of Developer, its successors or assigns, may waive and terminate Developer's covenants and agreements set forth in this Section 8.18(c).

8.19 **Reserved.**

8.20 **Job Readiness Program.** If requested by the City, Developer will use its best efforts to ensure that its tenants at the Project will participate in job readiness programs established by the City to help prepare individuals to work for businesses located within the Redevelopment Area.

8.21 **Public Benefits Program.** After the Closing Date, Developer will undertake a public benefits program ("**Public Benefits Program**") described in more detail in Exhibit L. If the Public Benefit Program is on-going, then Developer will provide the City with a status report on an annual basis describing in sufficient detail Developer's compliance with the Public Benefits Program.

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

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

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

ARTICLE NINE: REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY

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

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

ARTICLE TEN: DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time-to-time (the "**Human Rights Ordinance**"). Each Employer must 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, must 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 will comply with all applicable Federal, State and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the State Human Rights Act, 775 ILCS 5/1-101 et. seq. (2000 State Bar Edition, as amended), and any subsequent amendments and regulations promulgated thereto.

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

(e) Each Employer will include the foregoing provisions of subparagraphs (a) through (d) in every construction contract entered into in connection with the Project (other than for remediation and demolition entered into prior to the date of this Agreement), and will require inclusion of these provisions in every subcontract entered into by any subcontractors and every agreement with any Affiliate operating at the Building or on the Project, so that each such provision will be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 10.01 will be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof, subject to the cure rights under Section 15.03.

10.02 City Resident Construction Worker Employment Requirement.

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

Developer, the General Contractor and each subcontractor will use their respective best efforts to exceed the minimum percentage of hours stated above, and to employ neighborhood residents in connection with the Project.

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

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

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

(e) Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) will be submitted to the Commissioner of DPD in triplicate, which will identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

(f) Upon 2 Business Days prior written notice, Developer, the General Contractor and each subcontractor will provide full access to their employment records related to the Construction of the Project 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. Developer, the General Contractor and each subcontractor will maintain all relevant personnel data and records related to the Construction of the Project for a period of at least 3 years after final acceptance of the work constituting the Project.

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

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

(i) When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Article concerning the worker hours performed by actual residents of the City or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of

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

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

(k) Developer will cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Project (other than contracts for remediation and demolition entered into prior to the date of this Agreement).

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

(a) Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "**MBE/WBE Program**"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following percentages of the construction budget set forth in Exhibit D-2 hereto will be expended for contract participation by MBEs or WBEs:

- i. At least 25 percent by MBEs.
- ii. At least 5 percent by WBEs.

Developer, its successors and assigns and the General Contractor will each use their respective best efforts to exceed the percentages set forth above.

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

(c) Consistent with Section 2-92-440, Municipal Code of Chicago, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of: (i) the MBE or WBE participation in such joint venture; or, (ii) the amount of any actual work performed on the Project by the MBE or WBE), by 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 will not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 10.03. Developer or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in its activities and operations other than the Project.

(d) Developer will deliver a report to DPD when 50% of the Project Budget has been spent and thereafter quarterly during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports will include inter alia the name and business address of each MBE and WBE solicited by Developer or the General Contractor to work on the 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 Developer's compliance with this MBE/WBE commitment. DPD will have access to Developer's books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account in accordance with Article Fourteen of this Agreement, on 5 Business Days notice, to allow the City to review Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, Developer will 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 Section 2-92-540, Municipal Code of Chicago.

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

(g) Prior to the commencement of the Project, Developer, the General Contractor and all major subcontractors then under contract shall be required to meet with the monitoring staff of DPD with regard to Developer's compliance with its obligations under this Section 10.03. During this meeting, Developer must 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, Developer will submit the documentation required by this Section 10.03 to the monitoring staff of DPD. This information will include the following: (1) subcontractor's activity report; (2) General Contractor's certification concerning labor standards and prevailing wage requirements; (3) General Contractor letter of understanding; (4) monthly utilization report required under Section 3.07; (5) authorization for payroll agent; (6) certified payroll; and (7) evidence that MBE/WBE contractor associations have been informed of the Project, as required. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that Developer is not complying with its obligations hereunder will, upon the delivery of written notice to Developer, be deemed an Event of Default hereunder. Any such Event of Default will be subject to the cure provisions of Section 15.03(b).

(h) Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may withhold any further payment of any City Funds to Developer or the General Contractor, or seek any other remedies against Developer available at law or in equity.

ARTICLE ELEVEN: ENVIRONMENTAL MATTERS

11.01 **Environmental Matters.** Developer hereby represents and warrants to the City that Developer has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws, this Agreement and all Exhibits attached hereto, the Scope Drawings, the Plans and Specifications and all amendments thereto, the TIF Bond Ordinance, if any, and the Redevelopment Plan.

Without limiting any other provisions hereof, Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of Developer: (i) the presence of any Hazardous Materials on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Materials from: (A) all or any portion of the Property, or (B) any other real property in which Developer, or any person directly or indirectly controlling, controlled by or under common control with Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by Developer), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or Developer or any of its Affiliates under any Environmental Laws relating to the Property.

ARTICLE TWELVE: INSURANCE

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

ARTICLE THIRTEEN: INDEMNIFICATION

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

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

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

ARTICLE FOURTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT

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

14.02 **Inspection Rights.** Upon 3 Business Days notice, any authorized representative of the City will have access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

ARTICLE FIFTEEN: DEFAULT AND REMEDIES

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

- (a) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under this Agreement or any related agreement;
- (b) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under any other agreement with any person or entity if such failure may have a material adverse effect on Developer's business, property (including the Property or the Project), assets (including the Property or the Project), operations or condition, financial or otherwise;
- (c) the making or furnishing by Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;
- (d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt by Developer to create, any lien or other encumbrance upon the Property or the Project, 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 Developer or Developer's ultimate parent entity or for the liquidation or reorganization of Developer or Developer's ultimate parent entity, or alleging that Developer or Developer's ultimate parent entity is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer's or Developer's ultimate parent entity's debts, whether under the United States Bankruptcy Code or under any other state or Federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving Developer or Developer's ultimate parent entity; provided, however, that if such commencement of proceedings is involuntary, such action will not constitute an Event of Default unless such proceedings are not dismissed within 60 days after the commencement of such proceedings;

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

(g) the entry of any judgment or order against Developer for an amount in excess of \$1.0 million which remains unsatisfied or undischarged and in effect for 60 days after such entry without a stay of enforcement or execution;

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

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

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

For purposes of Section 15.01(j) hereof, a natural person with a material interest in Developer is one owning in excess of thirty-three percent (33%) of Developer's or Developer's ultimate parent entity's issued and outstanding ownership shares or interest.

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

15.03 **Curative Period.**

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

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

ARTICLE SIXTEEN: MORTGAGING OF THE PROJECT

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

(a) If a mortgagee or any other party shall succeed to Developer's interest in the Property or any portion thereof by the exercise of remedies under a mortgage or deed of trust (other than an Existing Mortgage or a Permitted Mortgage) whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.14 hereof, the City may, but will not be obligated to, attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party will be entitled to no rights or benefits under this Agreement, but such party will be bound by those provisions of this Agreement that are covenants expressly running with the land.

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

therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.14 hereof, then the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the executory obligations and liabilities of "Developer" hereunder. Notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party will have no liability under this Agreement for any Event of Default of Developer which occurred prior to the time such party succeeded to the interest of Developer under this Agreement, in which case Developer will be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of Developer's interest hereunder, such party will be entitled to no rights and benefits under this Agreement, and such party will be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the-land.

(c) Prior to the issuance by the City to Developer of a Certificate under Article Seven hereof, no New Mortgage will be executed with respect to the Property or the Project or any portion thereof without the prior written consent of the Commissioner of DPD. A feature of such consent will be that any New Mortgage will subordinate its mortgage lien to the covenants in favor of the City that run with the land. After the issuance of a Certificate, consent of the Commissioner of DPD is not required for any such New Mortgage.

ARTICLE SEVENTEEN: NOTICES

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

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

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

If to Developer: Cardinal Limited Partnership
308 West Erie Street
Suite 705
Attention: Glazier Corporation, General Partner
Chicago, Illinois 60610
Telephone: 312/944-6699
Fax: 312/944-0963

With Copies To: Acosta, Kruse, Raines & Zemenides, LLC
1 South Wacker Drive
Suite 3890
Chicago, Illinois 60606
Attention: Endy D. Zemenides, Esq.
Telephone: 312/759-3914
Fax: 312/759-3910

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

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

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

ARTICLE EIGHTEEN: ADDITIONAL PROVISIONS

18.01 **Amendments.** This Agreement and the Schedules and Exhibits attached hereto may not be modified or amended except by an agreement in writing signed by the parties; provided, however, that the City in its sole discretion, may amend, modify or supplement the Redevelopment Plan, which is Exhibit C hereto. For purposes of this Agreement, Developer is only obligated to comply with the Redevelopment Plan as in effect on the date of this Agreement.

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

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

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

18.05 **Waivers.** No party hereto will be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by such party. No delay or omission on the part of a party in exercising any right will operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement will not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, will constitute a waiver of any of such parties' rights or of any obligations of any other party hereto as to any future transactions.

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

18.07 **Parties in Interest/No Third Party Beneficiaries.** The terms and provisions of this Agreement are binding upon and inure to the benefit of, and are enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this

Agreement, nor any act of the City or the Developer, will be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or Developer.

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

18.09 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, must be construed together and will constitute one and the same instrument.

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

18.11 **Conflict.** In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances in effect as of the date of this Agreement, such ordinance(s) will prevail and control.

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

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

18.14 **Assignment.** Prior to the issuance by the City to Developer of a Certificate, Developer may not sell, assign or otherwise transfer its interest in this Agreement or the Note in whole or in part without the written consent of the City; provided, however, that Developer may assign, on a collateral basis, the right to receive City Funds under the Note to a lender providing Lender Financing, if any, which has been identified to the City as of the Closing Date. Any successor in interest to Developer under this Agreement will certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Section 8.18 (Real Estate Provisions) and Section 8.24 (Survival of Covenants) hereof, for the Term of the Agreement. Developer hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

18.16 **Force Majeure.** Neither the City nor Developer nor any successor in interest to either of them will be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, war, terrorism, 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 will, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

18.17 **Exhibits and Schedules.** All of the exhibits and schedules attached hereto are incorporated herein by reference. Any exhibits and schedules to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

18.18 **Business Economic Support Act.** Under the Business Economic Support Act (30 ILCS 760/1 et seq. 2000 State Bar Edition, as amended), if Developer is required to provide notice under the WARN Act, Developer will, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

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

18.20 **Construction of Words.** The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires. The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise. The words "herein,"

“hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

18.21 **Survival of Agreements.** Except as otherwise contemplated by this Agreement, all covenants and agreements of the parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

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

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

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

[The remainder of this page is intentionally left
blank and the signature page follows]

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

CARDINAL LIMITED PARTNERSHIP, an Illinois limited partnership

By: ^{A DELAWARE} Glazier Corporation, ~~an Illinois~~ corporation, general partner

By:  _____

Printed Name: Josh Glazier

Title: President

CITY OF CHICAGO

By:  _____
Commissioner,
Department of Planning and
Development

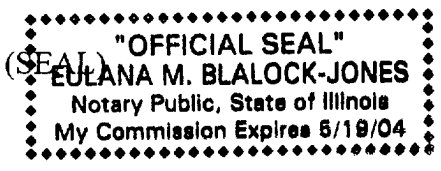
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, EULANA M. BLALOCK-JONES, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Josh GLAZIER, personally known to me to be the President of Glazier Corporation, an ^{Delaware} Illinois corporation which is the general partner of Cardinal Limited Partnership, an Illinois limited partnership (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 signed, sealed, and delivered said instrument, pursuant to the authority given to him by Glazier Corporation, an Illinois corporation, as his 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 19th day of JUNE, 2003.

Eulana M. Blalock-Jones
Notary Public

My Commission Expires 5/19/04



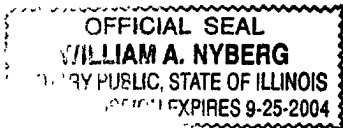
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, William A. Nyberg, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Alicia Mazur Burg , 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 she signed, sealed, and delivered said instrument pursuant to the authority given to her by the City, as her free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 19th day of June, 2003.

William A. Nyberg

Notary Public



My Commission Expires 9/25/2004

CARDINAL LIMITED PARTNERSHIP

Redevelopment Agreement
dated as of June 19, 2003

SCHEDULE A

DEFINITIONS

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

"47th/Ashland Redevelopment Project Area Special Tax Allocation Fund" means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes (as defined below) will be deposited.

"Acquired Property " has the meaning defined in Section 4.07.

"Act" has the meaning defined in Recital B.

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

"Affiliate" means any individual, corporation, partner, partnership, trust or entity which owns or controls a controlling interest (directly or indirectly), or is owned or controlled by, or is under common ownership or control with, in whole or in part, Developer or any successor to Developer or its respective subsidiary(ies) or parent(s).

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

"Available Incremental Taxes" means an amount equal to 90% of the Incremental Taxes (as defined below) deposited after the Closing Date in the 47th / Ashland Redevelopment Project Area Special Tax Allocation Fund (as defined above) attributable to the taxes levied on the Property, using the year 2000 as a base year for equalized assessed valuation.

"Available Project Funds" has the meaning defined for such phrase in Section 5.16(g).

"Bonds" has the meaning defined in Section 8.05.

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

"Certificate" means the Certificate of Completion of Construction described in Section 7.01.

"Certificate of Expenditure(s)" means the certificates, in the form of Exhibit M hereto, issued by the City to increase respectively the principal amount of the Note.

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

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

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

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

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

"City Group Member" has the meaning defined in Section 8.10.

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

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

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

"Deed" has the meaning defined in Section 4.07

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

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

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

"Environmental Laws" means any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et

seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago (as defined below).

"Equity" means funds of Developer (other than funds derived from Lender Financing (as defined below)) irrevocably available for the Project, in the amount stated in Section 4.01 hereof, which amount may be increased under Section 4.05 (Cost Overruns).

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

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

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

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

"Governmental Charge" has the meaning defined in Section 8.18(i).

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

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

"Incremental Taxes" means 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 for deposit by the Treasurer into a special tax allocation fund established to pay Redevelopment Project Costs (as defined below) and obligations incurred in the payment thereof, such fund for the purposes of this Agreement being the 47th/Ashland Redevelopment Project Area Special Tax Allocation Fund.

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

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

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

"Low Occupancy Period" has the meaning defined in Section 4.03(b).

"MBE(s)" means a business identified in the Directory of Certified Minority Business Enterprises published by the Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise.

"MBE/WBE Program" has the meaning defined in Section 10.03(a).

"Minimum Assessed Value" has the meaning defined in Section 8.18(c)(i).

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

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

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

"Note" means the taxable City of Chicago Tax Increment Allocation Revenue Note R-1 (Cardinal Limited Partnership Redevelopment Project), Taxable Series A to be in the form attached hereto as Exhibit M in the maximum principal amount of up to \$311,107 to be issued by the City to Developer when a Certificate is issued under Section 7.01. The Note will bear interest at an annual rate of 8.0%, and will provide for accrued, but unpaid interest to bear interest at the same annual rate as of each February 1. The payment of the amounts due under Note will be secured only by the Available Incremental Taxes, and the Note will have a term ending on the earlier to occur of: (i) 20 years from the date of issuance or (ii) the date on which the Redevelopment Area is no longer in existence.

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

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

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

"Prior Expenditure(s)" has the meaning defined in Section 4.04(a).

"Project" has the meaning defined in Recital D.

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

"Property" has the meaning defined in Recital D.

"Public Benefits Program" has the meaning defined in Section 8.21.

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

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

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

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

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

"Tenant Allowances" has the meaning defined in Section 6.01(c).

"Term of the Agreement" means 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, but not to extend beyond March 27, 2025) or the date when the term of the Note ends, whichever is earlier.

"TIF Adoption Ordinance" has the meaning stated in Recital C.

"TIF Bonds" has the meaning defined for such term in Recital F.

"TIF Bond Ordinance" has the meaning stated in Recital F.

"TIF Bond Proceeds" has the meaning stated in Recital F.

"TIF Ordinances" has the meaning stated in Recital C.

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

"Title Company" means Chicago Title Company.

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

"Under Assessment Complaint" has the meaning set forth in Section 8.18(c)(iv).

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

"WBE(s)" means a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise.

CARDINAL LIMITED PARTNERSHIP

Redevelopment Agreement
dated as of June 19, 2003

SCHEDULE B

ARTICLE TWELVE: INSURANCE REQUIREMENTS

12.01 **Insurance.** Developer will provide and maintain, or cause to be provided and maintained, at Developer's own expense, during the Term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

(a) Prior to Execution and Delivery of this Agreement

(i) Workers' Compensation and Employers Liability 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 must include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

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

(i) Workers Compensation and Employers Liability 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 must include the following: All premises and operations, products/completed operations (for a minimum of 2 years following Project completion), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, 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, Developer must cause each contractor to provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

(iv) Railroad Protective Liability Insurance

When any work is to be done adjacent to or on railroad or rail transit property or within 50 feet of railroad or rail transit property, contractor must provide, or cause to be provided with respect to the operations that the contractor performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) All Risk Builders Risk Insurance

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

(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

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

(c) Other Insurance Required.

- (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 Building. The City is to be named as an additional insured.
- (ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Building site. Coverage extensions shall include business interruption/loss of rents, flood and

boiler and machinery, if applicable. The City is to be named as an additional insured.

(d) Other Requirements

- (i) Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Developer will submit evidence of insurance on the City Insurance Certificate Form or commercial equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer must not be deemed to be a waiver by the City. Developer will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance will not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this Agreement until proper evidence of insurance is provided.
- (ii) The insurance will provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any and all deductibles or self insured retentions on referenced insurance coverages are borne by Developer.
- (iv) Developer agrees that insurers must waive rights of subrogation against the City, its employees, elected officials, agents, or representatives.
- (v) Developer expressly understands and agrees that any coverages and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.
- (vi) Developer expressly understands and agrees that Developer's insurance is primary and any insurance or self insurance programs maintained by the City will not contribute with insurance provided by Developer under the Agreement.

- (vii) The required insurance will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (viii) Developer will require its general contractor and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the contractor or subcontractors. All contractors and subcontractors will be subject to the same requirements of Developer unless otherwise specified herein.
- (ix) If Developer, contractor or subcontractor desires additional coverages, Developer, contractor and each subcontractor will be responsible for the acquisition and cost of such additional protection.
- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not, without Developer's written consent, increase such requirements.

(ASSIGNMENT)


FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto Eagle Limited Partnership, an Illinois limited partnership Registered Note R-1 and does hereby irrevocably constitute and appoint the Controller of the City of Chicago attorney-in-fact to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: 10/22/07

Cardinal Limited Partnership,
an Illinois Limited Partnership,
the Registered Owner



By: Glazier Corporation, a
Delaware Corporation, General Partner

By: 

Printed Name: Josh Glazier

Title: President

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 as of:

City of Chicago, Illinois

By: 
Title: Asst Commissioner, Department of
Planning and Development