

Park District

By: _____
Name

Title: _____

Subscribed and Sworn before me this
_____ day of _____, _____.

My commission expires: _____.

Agreed and Accepted:

City of Chicago

Name

Title: _____

City of Chicago
Department of Planning and Development

DESIGNATION OF GENDELL PARTNERS-MT. GREENWOOD L.L.C.
AS PROJECT DEVELOPER AND AUTHORIZATION FOR
EXECUTION OF REDEVELOPMENT AGREEMENT
FOR CONSTRUCTION OF RETAIL CENTER
AT 3200 WEST 111TH STREET.

The Committee on Finance submitted the following report:

CHICAGO, November 5, 2008.

To the President and Members of the City Council:

Your Committee on Finance, having had under consideration an ordinance authorizing entering into and executing a redevelopment agreement with Gendell Partners-Mt. Greenwood L.L.C., 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 Flores, Fioretti, Dowell, Preckwinkle, Hairston, Lyle, Harris, Beale, Pope, Balcer, Cárdenas, Olivo, Burke, Foulkes, Thompson, Thomas, Lane, Rugai, Cochran, Brookins, Muñoz, Zalewski, Dixon, Solis, Ocasio, Burnett, E. Smith, Carothers, Reboyras, Suarez, Waguespack, Mell, Austin, Colón, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Reilly, Daley, Tunney, Levar, Shiller, Schulter, Moore, Stone -- 48.

Nays -- None.

Alderman Carothers 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 September 29, 1999 and published at pages 11413 -- 11485 of the *Journal of the Proceedings of the City Council of City of Chicago* (the "*Journal*") of such date, a certain redevelopment plan and project for the 111th Street and Kedzie Avenue Business District Redevelopment Project Area (the "Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1, et seq.) (the "Act") (such plan and project are referred to herein as the "Plan"); and

WHEREAS, Pursuant to an ordinance adopted by the City Council on September 29, 1999 and published at pages 11486 -- 11495 of the *Journal* of such date, the 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 September 29, 1999 and published at pages 11496 -- 11505 of the *Journal* of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Area Redevelopment Project Costs (as defined in the Act) incurred pursuant to the Plan; and

WHEREAS, Gendell Partners-Mt. Greenwood L.L.C., an Illinois limited liability company (the "Developer") has purchased or will purchase certain real property located within the Redevelopment Area and commonly known as 3200 West 111th Street in the City and legally described on (Sub)Exhibit B of the attached Redevelopment Agreement (as defined herein) and will complete construction of the following (the "Facility"): an approximately eighteen thousand one hundred seventeen (18,117) square-foot retail center with two (2) buildings, including an approximately thirteen thousand six hundred fifty (13,650) square-foot, drive-through commercial retail structure with a fifty percent (50%) green roof; a fully-landscaped parking lot for seventy-one (71) cars; the vacation of approximately fifteen thousand four hundred forty-five (15,445) net square feet of public rights-of-way (a section of South Sawyer Avenue and sections of two (2) alleys between South Kedzie Avenue and South Spaulding Avenue) and relocation of all of the utilities that exist in the public rights-of-way; an approximately three thousand seven hundred (3,700) square-foot corner green plaza with appropriate signage identifying the Mt. Greenwood Community and incorporating the architectural elements of the proposed commercial buildings, significant landscaping and bench seating along an internal, brick-paved path within the site to provide pedestrian access; vehicular access from West 111th Street and South Kedzie Avenue. The Facility and related improvements are collectively referred to herein as the "Project"; and

WHEREAS, The Developer (i) shall undertake the completion of the Project and (ii) shall undertake certain other covenants associated with the Project, all in accordance with the Plan and pursuant to the terms and conditions of a proposed redevelopment agreement to be executed by the Developer and the City; and

WHEREAS, Pursuant to Resolution 08-CDC-15 adopted by the Community Development Commission of the City of Chicago (the "Commission") on February 19, 2008, the Commission authorized the City's Department of Planning and Development ("D.P.D.") to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer for the Project; now, therefore,

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

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

SECTION 2. 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 among the Developer and the City in substantially the form attached hereto as Exhibit A and made a part hereof (the "Redevelopment Agreement"), and such other supporting documents as may be necessary to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement. All capitalized terms, unless defined herein, shall have the same meanings as are set forth in the Redevelopment Agreement.

SECTION 4. The City Council hereby authorizes the City to (i) issue tax increment allocation revenue obligations in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) for the purpose of paying a portion of T.I.F. eligible costs Developer incurs prior to or after closing on the Redevelopment Agreement and other Redevelopment Project Costs (as defined in the Act) incurred within the Project and relating to the Facility, which tax increment revenue obligations shall be repaid with Incremental Taxes from the Area.

SECTION 5. There shall be borrowed for and on behalf of the City in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) for the purpose of paying a portion of the Redevelopment Project Costs included within the Project and relating to the Facility incurred at the Property. A note of the City shall be issued up to said amount and shall be designated "City of Chicago Tax Increment Allocation Revenue Obligation, 111th Street & Kedzie Avenue Business District Redevelopment Project Area (Gendell Partners-Mt. Greenwood L.L.C. Redevelopment Project) Taxable, Registered Number R-1 (the "Note"). 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 a rate equal to the median value of the ten (10) year United States Treasury constant maturity as published in the daily Federal Reserve Statistical Release for the fifteen (15) business days prior to the Closing Date plus two hundred fifty (250) basis points, and shall provide for accrued, but unpaid, interest to bear interest at the same annual rate, but in no event exceeding seven percent (7.00%) per annum.

The Note shall be issued to Developer to reimburse Developer for Redevelopment Project Costs and shall be payable solely from excess funds in the 111th Street & Kedzie Avenue Business District Redevelopment Project Area Special Tax Allocation Fund (as defined in the 111th Street & Kedzie Avenue Business District T.I.F. Ordinance and shall be disbursed pursuant to the terms of the Redevelopment Agreement.

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 persons in whose names the Note is registered at the close of business on the fifteenth (15th) day of the month immediately prior to the applicable

payment date, unless the City has been directed to make such payment in another manner by written notice given to the Registrar by the registered owner at least thirty (30) days 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 or the Mayor may designate another to act as his proxy and to affix his signature to each Note, and each Note shall be 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.

Each 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 each of the Note shall be conclusive evidence that each of the Note has been authenticated and delivered under this ordinance.

SECTION 6: The City shall cause books (the "Register") for the registration and for the transfer of each 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 City is authorized to prepare, and the Registrar shall keep custody of, multiple Note blanks for each Note executed by the City for use in the transfer of the Note.

Upon surrender for transfer of a 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 its 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 a 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 a 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) business days next preceding mailing of a notice of redemption of principal of the Note. No beneficial interests in a Note shall be assigned, except in accordance with the procedures for transferring the Note described above.

The 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 or upon the order of the registered owner thereof or its 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 a 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 a Note.

SECTION 7. The principal of a Note shall be subject to prepayment as provided in the form of Note attached hereto as Exhibit B. As directed by the Commissioner, the Registrar shall proceed with redemptions without further notice or direction from the City.

SECTION 8. The Registrar shall state 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 prepayment, and the amount of any reduction in principal pursuant to the Redevelopment Agreement.

SECTION 9. The Note shall be prepared in substantially the form attached hereto as Exhibit B.

SECTION 10. The Note hereby authorized shall be executed as provided in this ordinance and the Redevelopment Agreement, and thereupon be deposited with the Commissioner and be delivered by said Commissioner to CCSIM.

SECTION 11. The Note is a special limited obligation of the City, and is payable solely from amounts on deposit in the 111th Street & Kedzie Avenue Business District Redevelopment Project Area Special Tax Allocation Fund (the "111th Street & Kedzie T.I.F. Fund"), and shall be a valid claim of the registered owner 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(s) 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 12. Monies on deposit in the 111th Street & Kedzie T.I.F. Fund 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 13. Pursuant to the Redevelopment Agreement, the Developer has agreed to perform and complete the Project. Developer's expenditure of up to the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) of eligible costs of the Project relating

to the Facility shall be deemed to be a disbursement of the proceeds of the Note, and the outstanding principal amount of the Note shall be represented by the sum of advances made pursuant to a 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 Redevelopment Agreement, minus any principal amount paid on the Note and other reductions in principal as provided in the 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 One Million Five Hundred Thousand Dollars (\$1,500,000) for the Note. Upon execution of a Certificate of Expenditure, the Registrar shall promptly send the Certificate to the Registered Owner and retain a copy with the Register. The Certificate of Expenditure shall be in substantially the form attached hereto as Exhibit C.

SECTION 14. The Registrar shall maintain a list of the names and addresses of the registered owners from time to time of the Note and upon any transfer shall add the name and address of the new registered owner and eliminate the name and address of the transferor.

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

SECTION 16. The Mayor (or the Mayor's designated proxy), the City 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 17. 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 18. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 19. This ordinance shall be in full force and effect immediately upon its passage.

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

*Exhibit "A".
(To Ordinance)*

*Gendell Partners - Mt. Greenwood L.L.C.
Redevelopment Agreement*

By And Between

The City Of Chicago

And

Gendell Partners - Mt. Greenwood L.L.C.

This Gendell Partners – Mt. Greenwood LLC Redevelopment Agreement (this "**Agreement**") is made as of this ____ day of _____, 2008, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and Gendell Partners – Mt. Greenwood LLC, an Illinois limited liability company (the "**Developer**").

RECITALS

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

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

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on September 29, 1999: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the

111th Street & Kedzie Avenue Business District Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the 111th Street & Kedzie Avenue Business District as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the 111th Street & Kedzie Avenue Business District Redevelopment Project Area" (the "**TIF Adoption Ordinance**") (items(1)-(3) collectively referred to herein as the "**TIF Ordinances**"). The redevelopment project area referred to above (the "**Redevelopment Area**") is legally described in **Exhibit A** hereto.

D. The Project: The Developer has purchased or will purchase (the "**Acquisition**") certain property located within the Redevelopment Area at 3200 West 111th Street, Chicago, Illinois 60655 and legally described on **Exhibit B-1** hereto (the "**Property**"), and, within the time frame set forth in **Section 3.01** hereof, shall complete construction of the following (the "**Facility**"): an approximately 18,117 square-foot retail center with two buildings, including an approximately 13,650 square-foot, drive-through Walgreen's with a 50% green roof; a fully-landscaped parking lot for 71 cars; the vacation of approximately 15,445 net square feet of public rights-of-way (a section of S. Sawyer and sections of two alleys between S. Kedzie and S. Spaulding) and relocation of all of the utilities that exist in the public rights-of-way; an approximately 3,700 square-foot corner green plaza with appropriate signage identifying the Mt. Greenwood Community and incorporating the architectural elements of the proposed commercial buildings, significant landscaping and bench seating along an internal, brick-paved path within the site to provide pedestrian access; vehicular access from 111th Street and Kedzie Avenue; compliance with the City's landscaping ordinance. The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on **Exhibit C**) are collectively referred to herein as the "**Project**." 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 111th Street & Kedzie Avenue Business District Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan (the "**Redevelopment Plan**") attached hereto as **Exhibit D**, as amended from time-to-time, and Business Planned Development No. 1108, approved by City Council on May 14, 2008.

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

In addition, the City may, in its discretion, issue tax increment allocation bonds ("**TIF Bonds**") secured by Incremental Taxes pursuant to a TIF bond ordinance (the "**TIF Bond**

Ordinance") at a later date, the proceeds of which (the "**TIF Bond Proceeds**") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Incremental Taxes (including any such payment made pursuant to any City Note provided to the Developer pursuant to this Agreement), to make payments of principal and interest on the City Note, or in order to reimburse the City for the costs of TIF-Funded Improvements.

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

SECTION 1. RECITALS

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

SECTION 2. DEFINITIONS

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

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

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

"Acquisition" shall have the meaning set forth in the Recitals hereof.

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

"Approved Tenant" shall mean during the first ten (10) years after the initial occupancy of the commercial space, any tenant that engages in Retail Approved Purposes.

"Available Incremental Taxes" shall mean an amount equal to ninety percent (90%) of the Incremental Taxes deposited in the 111th Street & Kedzie Avenue Business District Redevelopment Project Area TIF Fund attributable to the taxes levied on the Property commencing the year following the issuance of the Certificate, as adjusted to reflect the amount of the City Fee described in **Section 4.05(b)** hereof.

"Average Minimum Occupancy" shall have the meaning set forth in **Section 8.19** hereof.

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

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

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

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

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

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

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

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

"City Note" shall mean the City of Chicago Tax Increment Allocation Revenue Obligation, 111th Street & Kedzie Avenue Business District Redevelopment Project Area (Gendell Partners – Mt. Greenwood L.L.C. Redevelopment Project) Taxable, Registered No. R-1, to be in the form attached hereto as **Exhibit M**, in the maximum principal amount of \$1,500,000, subject to reduction as set forth in **Section 4.03** herein, issued by the City to the Developer as provided herein. The City Note shall bear interest at the City Note Interest Rate, which shall begin to accrue as of the date of issuance of the Certificate, and shall provide for accrued, but unpaid, interest to bear interest at the same annual rate.

"City Note Interest Rate" shall mean an annual rate equal to the median value of the 10-year U.S. Treasury constant maturity as published in the daily Federal Reserve Statistical Release for the 15 business days prior to the Closing Date plus 250 basis points, and shall provide for accrued, but unpaid, interest to bear interest at the same annual rate, but in no event exceeding seven percent (7.00%) per annum.

"City-Owned Property" shall mean the real estate legally described in **Exhibit B-2** hereof.

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

"Commissioner" means the Commissioner of DPD.

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

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

"Deed" shall have the meaning set forth in **Section 4.08** hereof.

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

"Environmental Laws" shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560.

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

"Escrow" shall mean the construction escrow established pursuant to the Escrow Agreement.

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

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

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

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

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

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

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

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

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

"Maximum Cure Period" shall have the meaning set forth in **Section 8.19(c)** hereof.

"Minimum Cure Period" shall have the meaning set forth in **Section 8.19(c)** hereof.

"Minimum Occupancy" shall have the meaning set forth in **Section 8.19** hereof.

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

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

"Occupancy Default" shall have the meaning set forth in **Section 8.19** hereof.

"Occupancy Report" shall have the meaning set forth in **Section 8.19** hereof.

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

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

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

"Prohibited Use" shall mean the use of any portion of the Property for any of the following uses: funeral home, massage parlor, pornographic or "adult" bookstore, tattoo parlor, flea market, pawn shop, payday loan stores, hair salon, nails salon, barber-shop, "dollar-type" stores, currency exchanges, any production or manufacturing or industrial use, any use which creates a nuisance or materially increases noise or emissions of dust, odor, smoke, gases, any use which materially increases the risk of a fire, explosion or radioactive hazard, or any use involving Hazardous Materials. The Prohibited Uses shall only be allowed as a Special Use pursuant to Section 17-13-0900 of the Municipal Code of the City.

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

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

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

"Purchase Price" shall have the meaning set forth in **Section 4.08** hereof.

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

"Qualified Transfer" shall mean (i) a pledge of the City Note to a lender providing financing or (ii) the sale of the City Note to a Qualified Investor or to a trust where certificates of participation are sold to Qualified Investors, or (iii) any other such sale or pledge as is reasonably acceptable to the Commissioner.

"Real Estate Purchase Sections" shall mean **Sections 4.08 and 4.09** hereof.

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

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

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

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

"Retail Approved Purposes" means use of the Project for any retail, commercial or office use that is not a Prohibited Use, which use is approved by DPD, in its sole discretion.

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

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

"Term of the Agreement" shall mean the period of time commencing on the Closing Date and ending on September 29, 2022.

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

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

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

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

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

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

"Title Company" shall mean Chicago Title Company.

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

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

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

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof, complete construction and conduct business operations therein no later than September 30, 2009.

3.02 Scope Drawings and Plans and Specifications. The Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. The Developer shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budget. The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total estimated costs for the Project in an amount not less than Ten Million Nine Hundred Nine-Six Thousand Four Hundred Forty-Seven Dollars (\$10,996,447). The Developer hereby certifies to the City that (a) the Initial Payment, together with Lender Financing and Equity described in **Section 4.02** hereof, shall be sufficient to complete the Project; and (b) the Project Budget is true, correct and complete in all material respects to the best of Developer's knowledge. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

3.04 Change Orders. Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by the Developer to DPD concurrently with the progress reports described in **Section 3.07** hereof; provided, that any Change Order relating to any of the following must be submitted by the Developer to DPD for DPD's prior written approval: (a) a reduction in the square footage of the Facility by more than 5%; (b) a change in the use of the Property to a use other than commercial, retail and/or office; (c) an increase in the Project Budget of more than 10%; or (d) a delay in the completion of the Project by more than 120 days. DPD shall make its best efforts to expeditiously review any such Change Order request and approve or disapprove (with a written explanation given of any disapproval) such proposed Change Order, within thirty (30) days of its receipt thereof. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DPD's written approval (to the extent required in this section). The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer.

Notwithstanding anything to the contrary in this **Section 3.04**, Change Orders costing less than Fifty Thousand Dollars (\$50,000.00) each, to an aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), do not require DPD's prior written approval as set forth in this **Section 3.04**, but DPD shall be notified in writing of all such Change Orders prior to the implementation thereof and the Developer, in connection with such notice, shall identify to DPD the source of funding therefor.

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

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

3.07 Progress Reports. The Developer shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**).

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

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

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

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

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

SECTION 4. FINANCING SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$10,996,447, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to Sections 4.03(b) and 4.06)	\$2,421,448
Lender Financing	\$8,000,000
Land write-down	<u>\$ 575,000</u>
ESTIMATED TOTAL	\$10,996,447

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

4.03 City Funds.

(a) **Uses of City Funds.** City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. **Exhibit C** sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b) and 4.05(d)**), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost.

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

(i) **City Note.** Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to issue the City Note to the Developer on the Closing Date in an amount equal to the cost of the TIF-Funded Improvements which have been incurred by Developer as

of the Closing Date. The City shall increase the principal amount of the City Note as the costs of additional TIF-Funded Improvements are incurred by the Developer. The principal amount of the City Note shall not exceed the amount of TIF-Funded Improvements which have been incurred by the Developer and are to be reimbursed by the City through payments of principal and interest on the City Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the City Note shall be an amount not to exceed the lesser of \$1,500,000 or 13.7% of the actual total Project costs; and provided, however, that payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the TIF Fund being sufficient for such payments. From the date of issuance of the Certificate, the City Note will be funded solely from Available Incremental Taxes. Interest on the City Note will only begin to accrue upon the issuance of the Certificate.

(ii) Reduction of City Note. Notwithstanding **Section 4.03(b)(i)**, the maximum principal amount of the City Note shall be reduced as follows: on a \$0.75-for-\$1 basis to the extent that the actual costs of the Project are less than the Project Budget. If upon issuance of the Certificate, the principal amount of the City Note exceeds the costs of TIF-Funded Improvements incurred in the Project, the principal amount of the City Note, and any accrued interest, will be reduced accordingly.

(iii) Payments on the City Note. No payment shall be made on the City Note until after the issuance of the Certificate. The first payment with respect to the City Note shall be made on the later to occur of May 1 of the following year (from Available Incremental Taxes received by the City in the prior year) or two months after the City's receipt of a Requisition Form in accordance with **Section 4.04**. Thereafter, annual payments shall be made on the later to occur of May 1st of each subsequent calendar year or two months after the City's receipt of a Requisition Form. If, in any year, the City does not make such scheduled annual payment, then, in the next year (and if required, any subsequent years), Available Incremental Taxes shall (a) first be applied to repay any shortfall amounts, (b) next be applied to make such year's scheduled annual principal and interest payment and (c) then be applied to prepay the City Note. The City Note may be prepaid in whole or in part, without premium or penalty, at any time.

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

(iv) Transfer of City Note. After its issuance, the Developer may sell, assign or pledge the City Note pursuant to a Qualified Transfer, subject to City approval of the

terms and conditions of such sale, assignment or pledge. Developer's pledge of the City Note to First Bank of Highland Park to secure a portion of Lender Financing is hereby approved. Notwithstanding any such permitted pledge, the City shall have no obligation to make any payments with respect to the City Note except to the Developer, and then subject to the conditions set forth in this Agreement, including but not limited to **Section 18.15**, and in the City Note.

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

(vi) **Other Incremental Taxes**. Any Incremental Taxes that either (a) are not Available Incremental Taxes or (b) are not required to make payments under this Agreement (whether because all currently due payments have been made, because of an Event of Default entitling the City to terminate further payments with respect to the City Note, because of the full repayment of the City Note, or otherwise) shall belong to the City and may be pledged or used for such purposes as the City deems necessary or appropriate.

4.04 Requisition Form. After the date of issuance of the Certificate and prior to each December 31 (or such other date as the parties may agree to) thereafter, beginning in 2009 and continuing throughout the earlier of (i) the Term of the Agreement or (ii) the date that the Developer has been reimbursed in full under this Agreement, the Developer shall provide DPD with a Requisition Form, along with the documentation described therein. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per calendar quarter (or as otherwise permitted by DPD).

4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

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

(b) **City Fee**. Annually, the City may allocate an amount not to exceed ten percent (10%) of the Incremental Taxes attributable to the Property for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City

Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

(c) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line and transfers and relocations of costs and expenses from one line item to another shall be permitted, without the prior written consent of DPD, provided, that all such transfers and/or reallocated line items, qualify as Redevelopment Project Costs.

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

4.07 Preconditions of Disbursement [Execution of Certificate of Expenditure]. Prior to each disbursement of City Funds hereunder, the Developer shall submit documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its sole discretion. Delivery by the Developer to DPD of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

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

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

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

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

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

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

(g) the Project is In Balance. The Project shall be deemed to be in balance ("**In Balance**") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "**Available Project Funds**" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby

agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, either procure additional Lender Financing for the Project or deposit with an escrow agent or make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit or additional lender financing shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer. In addition, the Developer shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the Bond Ordinance, if any, TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement (including, without limitation Section 8.19) and/or the Escrow Agreement.

4.08 Sale of City-Owned Parcels. (a) The City agrees to sell and Developer agrees to purchase the lots located at 3218-24 West 111th Street (the "**City-Owned Property**"), and legally described in Exhibit B-2, for \$1.00 total purchase price (the "**Purchase Price**") that shall be paid in cash in full by the Developer at Closing. The Developer acknowledges and agrees that the City-Owned Property has a fair market value price of approximately [Five Hundred Seventy-Five Thousand Dollars (\$575,000)] and that the Purchase Price reflects a land write-down from such amount. Such land write-down has been made in express reliance upon the Developer's undertakings under this Agreement, including, without limitation, the title provisions in this Section 4.08 and the environmental provisions in Section 4.09. The City will convey the City-Owned Property to the Developer by quit claim deed ("**Deed**"), subject to the terms of this Agreement and the following:

- (i) the Redevelopment Plan for this Redevelopment Area;
- (ii) the standard exceptions in an ALTA insurance policy;
- (iii) real estate taxes not yet due and owing;
- (iv) easements, encroachments, covenants and restrictions of record and not shown of record; and
- (v) such other title defects as may exist.

If necessary to clear title of exceptions for general real estate tax liens attributable to taxes due and payable prior to the Closing Date, the City shall submit to the County a tax abatement letter and/or file a vacation of tax sale proceeding in the Circuit Court of Cook County, seeking the exemption or waiver of such pre-closing tax liabilities, but shall owe no further duties with respect to any such taxes. The City shall also use good faith,

commercially reasonable efforts to clear such other title defects as may exist, but such good faith, commercially reasonable efforts shall in no instance obligate the City to incur any costs for releasing liens, settling disputed tax claims, paying unpaid taxes that cannot be addressed by the submission of a tax abatement letter or a tax sale proceeding, or similar matters. If the Developer finds title to any parcel objectionable, Developer's sole option shall be to decline to accept title to any such parcel, with no adjustment offset or adjustment in the Purchase Price.

(b) The City-Owned Property Closing. The City-Owned Property closing shall take place on such date and at such place as the parties may mutually agree to in writing, but in no event earlier than the satisfaction of all conditions precedent to closing set forth in **Section 5** and the Closing Date.

(c) Recordation of Quitclaim Deed. The Developer shall promptly record the quitclaim deed for the City-Owned Property in the Recorder's Office of Cook County. The Developer shall pay all costs for so recording the quitclaim deed.

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

4.09 Environmental Matters Concerning the Acquired City-Owned Property

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

(b) It is responsibility of the Developer, at its sole cost and expense, to obtain a phase I environmental report prior to the Closing Date. Prior to the Closing Date, the Developer, or the environmental consultant it retains to perform the phase I investigation, as the case may be, will have the right to request a right of entry for the purpose of inspecting the City-Owned Property as part of such phase I investigation. If such a request is made, the City will grant the Developer and its environmental consultant a right of entry for such purpose. The granting of the right of entry, however, will be contingent upon the Developer or the environmental consultant it retains to perform the phase I investigation, as the case may be, obtaining all 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) if applicable, 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 City-Owned 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 phase I environmental inspection activity on the City-Owned Property. The Developer or the environmental consultant it retains to perform the phase I investigation, as the case may be, will deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the City-Owned Property. The Developer expressly understands and agrees that any coverage and limits furnished by the Developer or the

environmental consultant it retains to perform the phase I investigation, as the case may be, will in no way limit the Developer's liabilities and responsibilities stated in this Agreement.

(c) The Developer or the environmental consultant it retains to perform the phase I investigation, as the case may be, agrees to carefully inspect the City-Owned Property prior to the commencement of any activity on the City-Owned 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 City-Owned Property. The Developer's or the environmental consultant's activities on the City-Owned Property prior to Closing will be limited to those reasonably necessary to perform the inspection work, if any, the Developer or the environmental consultant may wish to perform prior to the Closing Date, or, subject to the terms of an agreed upon right of entry, any remediation work. Upon completion of the work, the Developer agrees to restore the City-Owned Property to its original condition. The Developer will keep the City-Owned 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 City-Owned Property. If prior to the Closing Date, the Developer's environmental consultant determines that contamination exists on the City-Owned 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 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 City-Owned Property have been reviewed by the City.

(e) If after the Closing Date, the soil or environmental condition of the City-Owned Property is not in all respects entirely suitable for the use to which the City-Owned Property is to be utilized, it shall be the sole responsibility and obligation of the Developer to take such action as is necessary to put the City-Owned Property in a condition suitable for such intended use. The Developer agrees to release and indemnify the City from any claims and liabilities relating to or arising from the environmental condition of the City-Owned Property (including, without limitation, claims under CERCLA) and to undertake and discharge all liabilities of the City arising from any environmental condition which existed on the City-Owned Property prior to the Closing Date.

SECTION 5. CONDITIONS PRECEDENT

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

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

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

5.03 Other Governmental Approvals. The Developer has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD.

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

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

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

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

showing no liens against the Developer (unless bonded or insured over), the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.

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

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

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

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

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

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

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

5.14 Corporate Documents; Economic Disclosure Statement. The Developer has provided a copy of its Certificate of Formation containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; current operating agreement of the Developer; and such other corporate documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

5.15 Litigation. The Developer has provided to Corporation Counsel and DPD, a description of all pending or threatened litigation or administrative proceedings involving the

Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors. (a) Except as set forth in **Section 6.01(b)** below, prior to entering into an agreement with a General Contractor or any subcontractor for construction of the Project, the Developer shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with the City of Chicago, and shall submit all bids received to DPD for its inspection and written approval. (i) For the TIF-Funded Improvements, the Developer shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Project in a timely manner. If the Developer selects a General Contractor (or the General Contractor selects any subcontractor) submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. (ii) For Project work other than the TIF-Funded Improvements, if the Developer selects a General Contractor (or the General Contractor selects any subcontractor) who has not submitted the lowest responsible bid, the difference between the lowest responsible bid and the higher bid selected shall be subtracted from the actual total Project costs for purposes of the calculation of the amount of City Funds to be contributed to the Project pursuant to **Section 4.03(b)** hereof. The Developer shall submit copies of the Construction Contract to DPD in accordance with **Section 6.02** below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof. The Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

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

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

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

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

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

SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon completion of the construction of the Project in accordance with the terms of this Agreement, and upon the Developer's written request, DPD shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the construction of the Project in accordance with the terms of this Agreement.

- (a) The Certificate will not be issued until:
- (i) the Developer has notified the City in writing that the Project has been completed as defined in this Agreement, including that the total Project Cost has equaled or exceeded \$10,996,447;
 - (ii) the Developer has received a Certificate of Occupancy or other evidence acceptable to DPD that the Developer has complied with building permit requirements for the interior construction;
 - (iii) the City's Monitoring and Compliance Unit has verified that the Developer is in full compliance with City requirements set forth in **Section 10** (M/WBE, City Residency, Prevailing Wage) with respect to construction of the Project;
 - (iv) the Developer has submitted evidence that it has incurred TIF-eligible costs, to be determined solely by DPD, in an amount equal to or greater than the total amount of City assistance;
 - (v) the Developer has submitted evidence satisfactory to DPD that it has provided the Public Benefits as set forth on **Exhibit P**;
 - (vi) the Developer has provided evidence satisfactory to DPD that 80% of the net leasable square footage of the Project has been leased, and that 60% of the net leasable square footage of the Project has been occupied.

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

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

Those covenants specifically described at **Sections 8.02, 8.18 and 8.19** as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate;

provided, that upon the issuance of a Certificate, the covenants set forth in **Section 8.02** shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to **Section 18.15** of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

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

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

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

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

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

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

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

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

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

(c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary company action, and does not and will not violate its Certificate of Formation or operating agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any

agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Developer shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for liens which have otherwise been bonded or insured over and the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to **Section 8.14** hereof);

(e) the Developer is now and until the earlier to occur of the expiration of the Term of the Agreement and the date, if any, on which the Developer has no further interest in the Project shall remain solvent and able to pay its debts as they mature;

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

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

(h) the Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound and which would materially affect the Developer's ability to complete or cause the completion of the Project;

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

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

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

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

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

(n) the Property shall not be used for any Prohibited Use.

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in **Sections 3.02** and **3.03** hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

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

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

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

8.06 Employment Opportunity; Progress Reports. The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in **Section 10** hereof during the construction of the Project; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and City resident obligations in Section 10 shall be applied on an aggregate basis and the failure of the General Contractor to require each subcontractor to satisfy, or the failure of any one subcontractor to satisfy, such obligation shall not result in a default or a termination of the Agreement or require payment of the City resident hiring shortfall amount if such Section 10 obligations are satisfied on an aggregate basis. The Developer shall deliver to the City monthly written progress reports 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, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.

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

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

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

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

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

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

8.12 Financial Statements. The Developer shall obtain and provide to DPD Financial Statements for the Developer's fiscal year ended 2005 and each year thereafter for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request, upon DPD's request.

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

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

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent

the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this **Section 8.14**); or

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

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

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

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

8.18 Real Estate Provisions.

(a) **Governmental Charges.**

(i) **Payment of Governmental Charges.** The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project, or become due and payable, and which create or may create a lien upon the Developer or all or any portion of the Property or the Project. "**Governmental Charge**" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois,

counties of the State other than Cook County, and municipalities other than the City) relating to the Developer, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. The Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. The 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 shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to DPD of the Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

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

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

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

(c) Real Estate Taxes.

(i) Acknowledgment of Real Estate Taxes. The Developer agrees that (A) for the purpose of this Agreement, the total projected minimum assessed value of the

Property ("**Minimum Assessed Value**") is shown on **Exhibit K** attached hereto and incorporated herein by reference for the years noted on **Exhibit K**; and (B) the real estate taxes anticipated to be generated and derived from the respective portions of the Property and the Project for the years shown are fairly and accurately indicated in **Exhibit K**.

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

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

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

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

8.19 Occupancy Covenant.

(a) Approved Tenants. For a period of ten years following issuance of the Certificate, Developer shall lease space in the Facility only to Approved Tenants.

(b) Minimum Occupancy Requirements. Not later than _____ of the year following the year of issuance of the Certificate, Developer shall lease and cause to be occupied not less than 75% of the net leasable square footage of the Project (the "Minimum Occupancy"). Thereafter, and as a prerequisite for payments to be made on the City Note, Developer shall maintain an average occupancy ("Average Minimum Occupancy") over the twelve-month period preceding Developer's submission of an Occupancy Report (as defined below) equal to the Minimum Occupancy.

(c) Occupancy Reports; Occupancy Defaults. Contemporaneously with Developer's requisition for its annual disbursement under the City Note, Developer shall deliver to DPD an occupancy progress report ("**Occupancy Report**") detailing compliance with the Average Minimum Occupancy requirement for the 12-month period beginning January 1 of the preceding year. If Developer submits an Occupancy Report that indicates a failure to maintain the Average Minimum Occupancy (an "**Occupancy Default**"), such Occupancy Default shall not be deemed an Event of Default under this Agreement if: (i) the Developer has maintained the Minimum Occupancy in the 30 days preceding the date of the Occupancy Report and has provided the City with evidence that it has contracted for the Minimum Occupancy for the following year; (ii) the Developer has cured the Occupancy Default within one year following the date of the Occupancy Report specifying such Occupancy Default (such one-year period is referred to as the "**Minimum Cure Period**"); or (iii) the Developer has commenced to cure an Occupancy Default within the Minimum Cure Period and has cured such Occupancy Default within two years following the date of the Occupancy Report specifying the Occupancy Default (such two-year period is referred to as the "**Maximum Cure Period**"). Provided Developer has cured all Occupancy Defaults, Developer shall continue to deliver Occupancy Reports and maintain the Average Minimum Occupancy after the 10th anniversary of the issuance of the Certificate for the number of years for which Developer did not maintain the Average Minimum Occupancy.

(d) Occupancy Default Remedies. Upon the occurrence of an Occupancy Default, the City may suspend disbursement of payments due under the City Note until Developer has complied with the occupancy covenants in this **Section 8.19**. No interest shall accrue on the City Note: (i) during the year described in the Occupancy Report with an Occupancy Default; (ii) during the Minimum Cure Period unless Developer commences to cure the Occupancy Default within the Minimum Cure Period; or (iii) during the Maximum Cure Period. An Occupancy Default that is not cured as set forth in this **Section 8.19** shall be an Event of Default hereunder.

8.20 Survival of Covenants. All warranties, representations, covenants and agreements of the Developer contained in this **Section 8** and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as

provided in Section 7 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

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

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

SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 *et seq.*, Municipal Code of Chicago (the "**Procurement Program**"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 *et seq.*, Municipal Code of Chicago (the "**Construction Program**," and collectively with the Procurement Program, the "**MBE/WBE Program**"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following percentages of the MBE/WBE Budget (as set forth in **Exhibit H-2** hereto) shall be expended for contract participation by MBEs and by WBEs:

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

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

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more

than once with regard to the Developer's MBE/WBE commitment as described in this Section 10.03. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

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

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

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

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

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

SECTION 11. ENVIRONMENTAL MATTERS

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

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

SECTION 12. INSURANCE

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

(a) Prior to execution and delivery of this Agreement

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

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

(iii) All Risk Property

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

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

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) Automobile Liability (Primary and Umbrella)

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

(iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide or cause to be provided with respect to the operations that Contractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity.

The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) All Risk /Builders Risk

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

(vi) Professional Liability

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

(vii) Valuable Papers

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

(viii) Contractors Pollution Liability

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

(c) Post Construction:

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

(d) Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

SECTION 13. INDEMNIFICATION SECTION 13. INDEMNIFICATION

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

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

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

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

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

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them.

The provisions of the undertakings and indemnification set out in this **Section 13.01** shall survive the termination of this Agreement.

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

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

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

SECTION 15. DEFAULT AND REMEDIES

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

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

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

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

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

(e) the commencement of any proceedings in bankruptcy by or against the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent

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

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

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

(h) the occurrence of an event of default under the Lender Financing, which default is not cured within any applicable cure period (which applicable cure period shall include the extended cure period provided to the Lender providing the Lender Financing so long as said Lender is exercising its rights and remedies under Section 16 hereof);

(i) the dissolution of the Developer;

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

(k) prior to the issuance of the Certificate, the sale or transfer of a majority of the ownership interests of the Developer in violation of this Agreement.

For purposes of **Sections 15.01(i)** hereof, a person with a material interest in the Developer shall be one owning in excess of 10% of the Developer's issued and outstanding shares membership interests.

15.02 Remedies. Upon the occurrence of an Event of Default (subject to applicable cure provisions), 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.

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

SECTION 16. MORTGAGING OF THE PROJECT

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

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

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

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

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

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

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

16.02 Right to Cure by Lenders and Investors. In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in the termination of this Agreement or the cancellation, suspension, or reduction of any payment due from the City under this Agreement, the City shall send notice of such intended exercise to the parties identified in Section 17 and the Lenders and the limited partner investor(s) in the Developer shall have the right (but not the obligation) to cure such an Event of Default under the following conditions:

(a) if the Event of Default is a monetary default, any party entitled to cure such default may cure it within 30 days after the later of: (i) the expiration of the cure period, if any, granted to the Developer with respect to such monetary default; or (ii) receipt by the Lenders of such notice from the City; and

(b) if the Event of Default is of a non-monetary nature, any party entitled to cure such default shall have the right to cure it within 30 days after the later of: (i) the expiration of the cure period, if any, granted to the Developer with respect to such non-monetary default; or (ii) receipt

of such notice from the City; provided, however, that if such non-monetary default is not reasonably capable of being cured by any party entitled to cure such default within such 30-day period, such period shall be extended for such reasonable period of time as may be necessary to cure such default, provided that the party seeking such cure must continue diligently to pursue such cure and, if possession of the Project is necessary to effect such cure, the party seeking such cure must have instituted appropriate legal proceedings to obtain possession, and in any event such party shall have completed the cure of said default within six (6) months of the later of (i) and (ii) above.

SECTION 17. NOTICE

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

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

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

If to the Developer: Gendell Partners – Mt. Greenwood LLC
Chicago, Illinois 606__

With Copies To: _____

Attention: _____

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

SECTION 18. MISCELLANEOUS

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

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

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

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

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

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

18.07 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any

relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

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

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

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

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

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

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

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

18.15 Assignment. Prior to the issuance of the Certificate, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City subject to the provisions set forth in Section 4.03(b) hereof; provided that the Developer may at any time assign, on a collateral basis, the City Note to a lender providing Lender Financing. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.18 and 8.20 (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

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

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

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

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

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

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

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

GENDELL PARTNERS – MT. GREENWOOD LLC

By: _____
 Scott Gendell, Managing Member

CITY OF CHICAGO

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

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Scott Gendell, personally known to me to be the Managing Member of Gendell Partners – Mt. Greenwood LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the

(Sub)Exhibit "B-1".
(To Gendell Partners- Mt. Greenwood L.L.C.
Redevelopment Agreement)

Property Legal Description.

Permanent Index Numbers:

24-14-423-036;

24-14-423-035;

24-14-423-034; and

24-14-423-033.

Address:

3200 West 111th Street
Chicago, Illinois.

(Sub)Exhibit "B-2".
(To Gendell Partners- Mt. Greenwood L.L.C.
Redevelopment Agreement)

City-Owned Property Legal Description.

Permanent Index Number:

_____-_____-_____.

Address:

3218 -- 3224 West 111th Street
Chicago, Illinois.

(Sub)Exhibit "C".
 (To Gendell Partners- Mt. Greenwood L.L.C.
 Redevelopment Agreement)

T.I.F.-Funded Improvements.

* Of this total, only an amount not to exceed the lesser of One Million Five Hundred Thousand Dollars (\$1,500,000) or thirteen and seven-tenths percent (13.7%) of the actual total Project costs will be paid.

(Sub)Exhibit "G".
 (To Gendell Partners- Mt. Greenwood L.L.C.
 Redevelopment Agreement)

Permitted Liens.

1. Liens or encumbrances against the Property:

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

Any mortgage which secures a loan that is part of the Lender Financing.

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any:

None.

(Sub)Exhibit "H-1".
 (To Gendell Partners- Mt. Greenwood L.L.C.
 Redevelopment Agreement)

Project Budget.

Sources:	Amount
Equity	\$2,421,448

	Amount
Debt (First Bank of Highland Park)	\$ 8,000,000
Subject Property: City Parking Lot	<u>\$ 574,999</u>
Total Sources:	\$10,996,447
Uses:	
Land Acquisition	
Subject Property (\$44.69 psf)	\$ 575,000
Private Acquisition (\$52.56 psf)	<u>\$ 3,765,745</u>
Total Land Acquisition (\$51.36 psf):	\$ 4,340,745
Site Clearance and Preparation	
Utility Work	\$ 750,000
Demolition	\$ 250,000
Corner Green Plaza	\$ 210,000
Other Site Clearance Work	<u>\$ 290,000</u>
Total Site Clearance and Preparation	\$ 1,500,000
Hard Costs:	\$ 3,425,000
Soft Costs	
Architect's Fee (6.6% of hard costs)	\$ 225,000
Loan Origination Fee (.6% of loan)	\$ 50,000
Legal Fees (1.6% of total costs)	\$ 175,000
Marketing (.7% of total costs)	\$ 75,000
Loan Interest (5.2% of total costs)	\$ 570,962
Other soft costs (4.8% of total costs)	<u>\$ 534,740</u>
Total Soft Costs (14.8% of total costs)	\$ 1,630,702
Developer Fee (.9% of total costs)	<u>\$ 100,000</u>
TOTAL USES:	\$10,996,447

(Sub)Exhibit "I".
(To Gendell Partners- Mt. Greenwood L.L.C.
Redevelopment Agreement)

Approved Prior Expenditures.

Acquisition	<u>\$1,400,000</u>
TOTAL:	\$1,400,000

(Sub)Exhibit "J".
(To Gendell Partners- Mt. Greenwood L.L.C.
Redevelopment Agreement)

Opinion Of Developer's Counsel.

[To Be Retyped On The Developer's Counsel's Letterhead]

City of Chicago
City Hall, Room 600
121 North LaSalle Street
Chicago, Illinois 60602

Attention: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to _____, an [Illinois] _____
(the "Developer"), in connection with the purchase of certain land and the construction of
certain facilities thereon located in the _____ Redevelopment Project Area (the
"Project"). In that capacity, we have examined, among other things, the following agreements,
instruments and documents of even date herewith, hereinafter referred to as the
"Documents":

- (a) Redevelopment Agreement (the "Agreement") of even date herewith, executed by the
Developer and the City of Chicago (the "City");

[(b) the Escrow Agreement of even date herewith executed by the Developer and the City;]

(c) [insert other documents including but not limited to documents related to purchase and financing of the Property and all lender financing related to the Project]; and

(d) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, we have examined:

(a) the original or certified, conformed or photostatic copies of the Developer's (i) Articles of Incorporation, as amended to date, (ii) qualifications to do business and certificates of good standing in all states in which the Developer is qualified to do business, (iii) Bylaws, as amended to date, and (iv) records of all corporate proceedings relating to the Project [revise if the Developer is not a corporation]; and

(b) such other documents, records and legal matters as we have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

In all such examinations, we have assumed the genuineness of all signatures (other than those of the Developer), the authenticity of documents submitted to us as originals and conformity to the originals of all documents submitted to us as certified, conformed or photostatic copies.

Based on the foregoing, it is our opinion that:

1. The Developer is a corporation duly organized, validly existing and in good standing under the laws of its state of [incorporation] [organization], has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a foreign [corporation] [entity] under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business.

2. The Developer has full right, power and authority to execute and deliver the Documents to which it is a party and to perform its obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Developer's [Articles of Incorporation or Bylaws] [describe any formation documents if the Developer is not a corporation] or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction; or decree of any court, government or regulatory authority, or, to the best of our knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which the Developer is a party or by which the Developer or its properties is bound. To the

best of our knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than liens or security interests in favor of the lender providing Lender Financing (as defined in the Agreement).

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of the Developer.

4. Each of the Documents to which the Developer is a party has been duly executed and delivered by a duly authorized officer of the Developer, and each such Document constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5. (Sub)Exhibit A attached hereto (a) identifies each class of capital stock of the Developer, (b) sets forth the number of issued and authorized shares of each such class, and (c) identifies the record owners of shares of each class of capital stock of the Developer and the number of shares held of record by each such holder. To the best of our knowledge after diligent inquiry, except as set forth on (Sub)Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the capital stock of the Developer. Each outstanding share of the capital stock of the Developer is duly authorized, validly issued, fully paid and nonassessable.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against the Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Developer or affecting the Developer or its property, or seeking to restrain or enjoin the performance by the Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of our knowledge after diligent inquiry, the Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Developer or its business.

7. To the best of our knowledge after diligent inquiry, there is no default by the Developer or any other party under any material contract, lease, agreement, instrument or commitment to which the Developer is a party or by which the company or its properties is bound.

8. To the best of our knowledge after diligent inquiry, all of the assets of the Developer are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

9. The execution, delivery and performance of the Documents by the Developer have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

10. To the best of our knowledge after diligent inquiry, the Developer owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

11. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

We are attorneys admitted to practice in the State of Illinois and we express no opinion as to any laws other than federal laws of the United States of America and the laws of the State of Illinois.

This opinion is issued at the Developer's request for the benefit of the City and its counsel, and may not be disclosed to or relied upon by any other person.

Very truly yours,

[(Sub)Exhibit "A" referred to in this Opinion of Developer's Counsel unavailable at time of printing.]

(Sub)Exhibit "L".
(To Gendell Partners- Mt. Greenwood L.L.C.
Redevelopment Agreement)

Requisition Form.

State of Illinois)
)SS.
County of Cook)

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

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

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

\$ _____

C. The Developer requests reimbursement for the following cost of T.I.F.-Funded Improvements:

\$ _____

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

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

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

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

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

[Developer]

By: _____

Name: _____

Title: _____

Subscribed and Sworn before me this _____ day of _____, _____

My commission expires: _____

Agreed and Accepted:

Name

Title: _____

City of Chicago
Department of Planning and Development

(Sub)Exhibit "N".
(To Gendell Partners-Mt. Greenwood L.L.C.
Redevelopment Agreement)

Form Of Subordination Agreement.

This subordination agreement ("Agreement") is made and entered into as of the ____ day of _____, _____ between the City of Chicago by and through its Department of Planning and Development (the "City") and [Name Lender], a [national banking association] (the "Lender").

Witnesseth.

Whereas, Gendell Partners - Mt. Greenwood, L.L.C., an Illinois limited liability company (the "Developer") has purchased certain property located within the 111th Street and Kedzie Avenue Business District Redevelopment Project Area at 3200 West 111th Street, Chicago, Illinois 60655 and legally described on (Sub)Exhibit A hereto (the "Property"), in order to construct an approximately eighteen thousand one hundred seventeen (18,117) square-foot retail center with two (2) buildings, including an approximately thirteen thousand six hundred fifty (13,650) square-foot, drive-through Walgreen's with a fifty percent (50%) green roof; a fully-landscaped parking lot for seventy-one (71) cars; the vacation of approximately fifteen thousand four hundred forty-five (15,445) square feet of public rights-of-way (a section of South Sawyer Avenue and sections of two (2) alleys between South Kedzie Avenue and South Spaulding Avenue) and relocation of all of the utilities that exist in the public rights-of-way; an approximately three thousand seven hundred (3,700) square-foot corner green plaza with appropriate signage identifying the Mt. Greenwood Community and incorporating the architectural elements of the proposed commercial buildings, significant landscaping and bench seating along an internal, brick-paved path within the site to provide pedestrian access; vehicular access from 111th Street and Kedzie Avenue; compliance with the City's landscaping ordinance. The Facility and related improvements are collectively referred to herein as the "Project"; and

Whereas, As part of obtaining financing for the Project, the Developer ("Borrower") has entered into a certain Construction Loan Agreement dated as of _____ with the Lender pursuant to which the Lender has agreed to make a loan to the Borrower in an amount not to exceed \$ _____ (the "Loan"), which Loan is evidenced by a Mortgage Note and executed by the Borrower in favor of the Lender (the "Note"), and the repayment of the Loan is secured by, among other things, certain liens and encumbrances on the Property and other property of the Borrower pursuant to the following: (i) Mortgage dated _____ and recorded _____ as Document Number _____ made by the Borrower to the Lender; and (ii) Assignment of Leases and Rents recorded _____ as document number _____ made by the Borrower to the Lender (all such agreements referred to above and otherwise relating to the Loan referred to herein collectively as the "Loan Documents");

Whereas, The Developer desires to enter into a certain Redevelopment Agreement dated the date hereof with the City in order to obtain additional financing for the Project (the "Redevelopment Agreement", referred to herein along with various other agreements and documents related thereto as the "City Agreements");

Whereas, Pursuant to the Redevelopment Agreement, the Developer will agree to be bound by certain covenants expressly running with the Property, as set forth: in Sections 8.02, 8.18 and 8.19 of the Redevelopment Agreement (the "City Encumbrances");

Whereas, The City has agreed to enter into the Redevelopment Agreement with the Developer as of the date hereof, subject, among other things, to (a) the execution by the Developer of the Redevelopment Agreement and the recording thereof as an encumbrance against the Property; and (b) the agreement by the Lender to subordinate their respective liens under the Loan Documents to the City Encumbrances; and

Now, Therefore, For good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Subordination. All rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances. In all other respects, the Redevelopment Agreement shall be subject and subordinate to the Loan Documents. Nothing herein, however, shall be deemed to limit the Lender's right to receive, and the Developer's ability to make, payments and prepayments of principal and interest on the Note, or to exercise its rights pursuant to the Loan Documents except as provided herein.

2. Notice Of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender, (a) copies of any notices of default which it may give to the Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, respectively, and (b) copies of waivers, if any, of the Developer's default in connection therewith. Under no circumstances shall the Developer or any third party be entitled to rely upon the agreement provided for herein.

3. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

4. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

5. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

6. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

If To The City:

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

with a copy to:

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

If To The Lender:

Attention: _____

with a copy to:

Attention: _____

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

7. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

In Witness Whereof, This Subordination Agreement has been signed as of the date first written above.

[Lender], [a national banking association]

By: _____

Its: _____

City of Chicago

By: _____

Its: _____ Commissioner,
Department of Planning
and Development

hereby certify that, _____, personally known to me to be the _____ of [Lender], a _____, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by Lender, as his/her free and voluntary act and as the free and voluntary act of the Lender, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____.

Notary Public

My commission expires: _____

[Seal]

[(Sub)Exhibit "A" referred to in this Form of Subordination Agreement unavailable at time of printing.]

(Sub)Exhibit "P".
(To Gendell Partners-Mt. Greenwood L.L.C. Redevelopment Agreement)

Public Benefit Program.

An approximately three thousand seven hundred (3,700) square-foot corner green plaza with appropriate signage identifying the Mount Greenwood community and incorporating the architectural elements of the proposed commercial buildings, significant landscaping and bench seating along an internal, brick-paved path within the site to provide pedestrian access.

Exhibit "B".
(To Ordinance)

Form Of Note.

Registered
Number R-I

Maximum Amount
\$ _____

United States Of America

State Of Illinois

County Of Cook

City Of Chicago

Tax Increment Allocation Revenue Note (_____
Redevelopment Project), [Taxable] Series [A]

Registered Owner: [Developer]

Interest Rate: ___ per annum

Maturity Date: _____, _____ [twenty (20) years from
issuance date]

Know All Persons By These Presents, That the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$ _____ and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months. Accrued but unpaid interest on this Note shall also accrue at the interest rate per year specified above until paid.

Principal of and interest on this Note from the [Available Excess Incremental Taxes] [use applicable term] (as defined in the hereinafter defined Redevelopment Agreement) is due [February 1] [confirm with D.P.D.] of each year until the earlier of Maturity or until this Note is paid in full. Payments shall first be applied to interest. The principal of and interest on this Note are payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by the Comptroller of the City, as registrar and paying agent (the "Registrar"), at the close of business on the fifteenth (15th) day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by check or draft of the Registrar, payable in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal and accrued but unpaid interest will be payable solely upon presentation of this Note at the principal office of the Registrar in Chicago, Illinois or as otherwise directed by the City. The Registered Owner of this Note shall note on the Payment Record attached hereto the amount and the date of any payment of the principal of this Note promptly upon receipt of such payment.

This Note is issued by the City in the principal amount of advances made from time to time by the Registered Owner up to \$_____ for the purpose of paying the costs of certain eligible redevelopment project costs incurred by _____ [Developer] (the "Project"), which were [acquired], [constructed] and [installed] in connection with the development of an approximately [____ acre/ _____ square foot] site/building in the Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1, et seq.) (the "T.I.F. Act"), the Local Government Debt Reform Act (30 ILCS 350/1, et seq.) and an Ordinance adopted by the City Council of the City on _____, ____ (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the T.I.F. Act and the Ordinance, in order to pay the principal and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and conditions under which this Note is issued and secured. This Note Is A Special Limited Obligation Of The City, And Is Payable Solely From Available Excess Incremental Taxes, And Shall Be A Valid Claim Of The Registered Owner Hereof Only Against Said Sources. This Note Shall Not Be Deemed To Constitute An Indebtedness Or A Loan Against The General Taxing Powers Or Credit Of The City, Within The Meaning Of Any Constitutional Or Statutory Provision. The Registered Owner Of This Note Shall Not Have The Right To Compel Any Exercise Of The Taxing Power Of The City, The State Of Illinois Or Any Political Subdivision Thereof To Pay The Principal Or Interest Of This Note. The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of one hundred percent (100%) of the principal

amount thereof being redeemed. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

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

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth (15th) day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

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

Pursuant to the Redevelopment Agreement dated as of _____, ____ between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to [acquire] and [construct] the Project and to advance funds for the [construction of certain facilities] related to the Project on behalf of the City. The cost of such acquisition and construction in the amount of \$ _____ shall be deemed to be a disbursement of the proceeds of this Note.

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

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

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

In Witness Whereof, The City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has cause this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the City Clerk of the City, all as of _____, ____.

Mayor

[Seal]

Attest:

City Clerk

Registrar and Paying Agent:

Certificate
Of
Authentication

Comptroller of the
City of Chicago,
Cook County, Illinois

This Note is described in the within mentioned Ordinance and is the Tax Increment Allocation Revenue Note (_____ Redevelopment Project), [Taxable] Series [A], of the City of Chicago, Cook County, Illinois.

Comptroller

Date: _____

Principal Payment Record.

Date Of Payment	Principal Payment	Principal Balance Due
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Assignment)

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

Dated: _____
Registered Owner

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

Signature Guaranteed: _____

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

Consented to by:

City of Chicago,
Department of Planning and Development

By: _____

Its: _____

Exhibit "C".
(To Ordinance)

Form Of Certificate Of Expenditure.

(Closing Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")
\$ _____ Tax Increment Allocation Revenue Note
(_____ Redevelopment Project, [Taxable] Series [A])
(the "Redevelopment Note")

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

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

In Witness Whereof, The City has caused this Certification to be signed on its behalf as of (Closing Date).

City of Chicago

By: _____
Commissioner,
Department of Planning
and Development

Authenticated By:

Registrar

AUTHORIZATION FOR EXECUTION OF THIRD AMENDMENT
TO CITY MORTGAGE WITH PALMET VENTURE, L.L.C.
AND OTHER ENTITIES CONCERNING PROPERTY
AT 134 NORTH LA SALLE STREET.

The Committee on Finance submitted the following report:

CHICAGO, November 5, 2008.

To the President and Members of the City Council:

Your Committee on Finance, having had under consideration an ordinance authorizing the execution of an amendment to the redevelopment agreement with PalMet Venture, L.L.C., 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 Flores, Fioretti, Dowell, Preckwinkle, Hairston, Lyle, Harris, Beale, Pope, Balcer, Cárdenas, Olivo, Burke, Foulkes, Thompson, Thomas, Lane, Rugai, Cochran, Brookins, Muñoz, Zalewski, Dixon, Solis, Ocasio, Burnett, E. Smith, Carothers, Reboyras, Suarez, Waguespack, Mell, Austin, Colón, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Reilly, Daley, Tunney, Levar, Shiller, Schulter, Moore, Stone -- 48.

Nays -- None.

Alderman Carothers 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 (the "City Council") of the City of Chicago (the "City") on February 7, 1997 and published at pages 38260 -- 38400 and 38401 -- 38402 of the *Journal of the Proceedings of the City Council of the City of Chicago* (the "*Journal*") of such date, a certain redevelopment plan and project (the "Plan") for the Central Loop Redevelopment Project Area (the "Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1, et seq.) (the "Act"); and

WHEREAS, Pursuant to an ordinance adopted by the City Council on February 7, 1997, and published at pages 38400, 38403 -- 38412 and 38413 -- 38414 of the *Journal* of such date, the Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, Pursuant to an ordinance adopted by the City Council on February 7, 1997, and published at pages 38412, 38415 -- 38423 and 38424 -- 38425 of the *Journal* of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain redevelopment project costs (as defined in the Act) incurred pursuant to the Plan; and

WHEREAS, Pursuant to an ordinance adopted by the City Council on December 10, 1997 and published at pages 58759 -- 58858 of the *Journal*, the City entered into that certain Central Loop Redevelopment Agreement ("R.D.A.") dated as of March 6, 1998 and recorded on March 9, 1998 as Document Number 98185692 in the Office of the Cook County Recorder of Deeds by the City, PalMet Venture, L.L.C., an Illinois limited liability company ("PalMet"), and Chicago Title Insurance Company, not personally, but solely as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, not personally but as Trustee under a Trust Agreement dated November 19, 1996 and known as Trust Number 122332-01 (the "Trustee"); and

WHEREAS, The project consisted of three (3) major components identified in the R.D.A. as the Hotel, the Theater and the Office Building (all as defined in the R.D.A.); and

WHEREAS, PalMet entered into those certain Articles of Agreement for Deed dated November 2001 between PalMet, 134 N. LaSalle, L.L.C., an Illinois limited liability company ("134 N. LaSalle") and the Trustee (as amended, the "Office Purchase Agreement"), which provides for 134 N. LaSalle to use and occupy the Office Building and the "312 Restaurant" located in the Hotel (the "Restaurant"); and

WHEREAS, In connection with PalMet's sale of the Office Building and Restaurant to 134 N. LaSalle pursuant to the Office Purchase Agreement, PalMet, the Trustee and the City entered into an Amendment to Mortgage (the "First Amendment") dated as of July 8, 2002, which was recorded with the Recorder of Deeds of Cook County on August 2, 2002 as Document Number 00208656438; and

WHEREAS, Pursuant to the Assumption Agreement dated as of July 8, 2002 between the City and 134 N. LaSalle, 134 N. LaSalle agreed to assume certain obligations of PalMet set forth in the R.D.A. relating to the Office Building (the obligations set forth therein being referred to herein as the "Purchaser Performance Covenants"); and

WHEREAS, PalMet entered into a Purchase and Sale Agreement, dated September 14, 2006 between PalMet, CLPF-Bismarck Hotel Venture, L.P., a Delaware limited partnership ("Purchaser") and the Trustee (as amended, the "Hotel Purchase Agreement"), which provided for PalMet and the Trustee to transfer to Purchaser title of the Hotel and to assign to Purchaser the lease for the Restaurant (the "Restaurant Lease") located in the Office Building as of the Closing Date (as defined in the Hotel Purchase Agreement); and

WHEREAS, In connection with PalMet's sale of the Hotel and assignment of the Restaurant Lease to the Purchaser pursuant to the Hotel Purchase Agreement, PalMet, the Trustee, the City and the Purchaser entered into that certain Consent and Amendment to Mortgage and Redevelopment Agreement dated as of January 12, 2007 ("Second Amendment"), which was recorded with the Recorder of Deeds of Cook County on January 22, 2007, as Document Number 0702242128; and

WHEREAS, As of January 12, 2007, title to the Hotel was transferred to Purchaser and title to the Theater remains with PalMet; and

WHEREAS, The City issued the Certificate of Completion for the Project (as defined in Section 7 of the R.D.A.) on December 14, 2006; and

WHEREAS, Pursuant to Section 4.03(c) of the R.D.A., PalMet is obligated to return funds to the City if PalMet failed to comply with certain use, operating and job creation covenants regarding the Hotel and the Theater set forth in Section 8.06 of the R.D.A. (the "Use and Performance Covenants"), and the obligation to return those funds was secured by the Mortgage (the "Original Mortgage") dated as of March 6, 1998 executed by the Trustee and PalMet in favor of the City, which was recorded with the Recorder of Deeds of Cook County on March 9, 1998 as Document Number 98185693, as first amended by the First Amendment, and as second amended by the Second Amendment (collectively, the Original Mortgage, as amended by the First Amendment and the Second Amendment, the "City Mortgage"); and

WHEREAS, Pursuant to the Second Amendment, the Purchaser agreed to assume certain obligations of PalMet set forth in the R.D.A. relating to the Hotel (the obligations set forth therein being referred to herein as the "Hotel Performance Covenants"); and

WHEREAS, Pursuant to the Second Amendment, the Purchaser further agreed to take title to the Hotel subject to the Hotel Performance Covenants as of the Closing Date; and

WHEREAS, The Theater is no longer subject to a "Permanent Mortgage", as defined in the City Mortgage; and

WHEREAS, As to the Theater, PalMet has agreed not to create or allow the creation of any future debt that would be treated as a Permanent Mortgage without the City's consent; and

WHEREAS, The parties desire to amend the City Mortgage to permit certain refinancings of the Office Building and the Hotel;

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

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 Commissioner (the "Commissioner") of the City's Department of Planning and Development ("D.P.D.") 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 Third Amendment to the City Mortgage among the City, PalMet Venture, L.L.C., an Illinois limited liability company, Chicago Title Insurance Company, not personally, but solely as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, not personally but as Trustee under a Trust Agreement dated November 19, 1996 and known as Trust Number 122332-01, and CLPF - Bismarck Hotel Venture, L.P., a Delaware limited partnership and 134 N. LaSalle, L.L.C., an Illinois limited liability company in substantially in the form attached hereto as Exhibit A and made a part hereof (the "Third Amendment"), and such other supporting documents as may be necessary to carry out and comply with the provisions of the Third Amendment, with such changes, deletions and insertions as shall be approved by the persons executing the Third Amendment. The Commissioner or a designee of the Commissioner is each hereby authorized to give such approvals and consents on behalf of the City as are expressly provided for in the Third Amendment.

SECTION 3. 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 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall be in full force and effect immediately upon its passage and approval.

SECTION 6. The City Clerk shall provide to the Corporation Counsel, without charge, certified copies of this ordinance in such amount as shall be requested by the Corporation Counsel.

Exhibit "A" referred to in this ordinance reads as follows:

Exhibit "A".
(To Ordinance)

Third Amendment To Mortgage.

This Third Amendment to Mortgage ("**Third Amendment**") is dated as of _____, _____ by and among PalMet Venture, LLC, an Illinois limited liability company ("**PalMet**"), Chicago Title Insurance Company, not personally, but solely as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, not personally but as Trustee under a Trust Agreement dated November 19, 1996 and known as Trust No. 122332-01 (the "**Trustee**"), the City of Chicago, an Illinois municipal corporation, by and through its Department of Planning and Development (the "**City**" or "**Mortgagee**"), CLPF – Bismarck Hotel Venture, L.P., a Delaware limited partnership ("**Purchaser**") and 134 N. LaSalle, LLC, an Illinois limited liability company ("**134 N. LaSalle**").

RECITALS

WHEREAS, PalMet, the Trustee and the City have entered in to a Central Loop Redevelopment Agreement dated as of March 6, 1998 (the "**RDA**"), which was recorded with the Recorder of Deeds of Cook County on March 9, 1998 as Document No. 98185692, pursuant to which the City provided additional financing to assist PalMet in completing the Project (as defined in the RDA), which is located on the property described in Exhibit A attached hereto (the "**Property**"). Capitalized terms not otherwise defined in this Third Amendment shall have the meanings given them in the RDA;

WHEREAS, the Project consisted of three major components identified in the RDA as the Hotel, the Theater and the Office Building (all as defined in the RDA) and legally described on Exhibit B attached hereto;

WHEREAS, PalMet entered into those certain Articles of Agreement for Deed dated November 2001 between PalMet, 134 N. LaSalle and the Trustee (as amended, the "**Office Purchase Agreement**"), which provides for 134 N. LaSalle to use and occupy the Office Building

and the "312 Restaurant" located in the Hotel (the "Restaurant") as of the Initial Closing (as defined in the Office Purchase Agreement);

WHEREAS, as of the Initial Closing, 134 N. LaSalle leased the Restaurant back to PalMet, which continued to manage and operate the Restaurant either by itself or through an operator pursuant to a management agreement;

WHEREAS, as the Final Closing (as defined in the Office Purchase Agreement), title to the Office Building and Restaurant was transferred to 134 N. LaSalle subject to the aforementioned lease for the Restaurant, and title to the Office Building and Restaurant remains with 134 N. LaSalle;

WHEREAS, in connection with PalMet's sale of the Office Building and Restaurant to 134 N. LaSalle pursuant to the Office Purchase Agreement, PalMet, the Trustee and the City entered into an Amendment to Mortgage (the "First Amendment") dated as of July 8, 2002, which was recorded with the Recorder of Deeds of Cook County on August 2, 2002 as Document No. 00208656438;

WHEREAS, pursuant to the Assumption Agreement dated as of July 8, 2002 between the City and 134 N. LaSalle, 134 N. LaSalle agreed to assume certain obligations of PalMet set forth in the RDA relating to the Office Building (the obligations set forth therein being referred to herein as the "Purchaser Performance Covenants");

WHEREAS, PalMet entered into a Purchase and Sale Agreement, dated September 14, 2006 between PalMet, Purchaser and the Trustee (as amended, the "Hotel Purchase Agreement"), which provided for PalMet and the Trustee to transfer to Purchaser title of the Hotel and to assign to Purchaser the lease for the Restaurant (the "Restaurant Lease") located in the Office Building as of the Closing Date (as defined in the Hotel Purchase Agreement);

WHEREAS, in connection with PalMet's sale of the Hotel and assignment of the Restaurant Lease to the Purchaser pursuant to the Hotel Purchase Agreement, PalMet, the Trustee, the City and the Purchaser entered into that certain Consent and Amendment to Mortgage and Redevelopment Agreement dated as of January 12, 2007 ("Second Amendment"), which was recorded with the Recorder of Deeds of Cook County on January 22, 2007, as Document Number 0702242128.

WHEREAS, as of January 12, 2007, title to the Hotel was transferred to Purchaser and title to the Theater remains with PalMet;

WHEREAS, the City issued the Certificate of Completion for the Project (as defined in Section 7 of the RDA) on December 14, 2006;

WHEREAS, pursuant to Section 4.03(c) of the RDA, PalMet is obligated to return funds to the City if PalMet failed to comply with certain use, operating and job creation covenants regarding the Hotel and the Theater set forth in Section 8.06 of the RDA (the "Use and Performance Covenants"), and the obligation to return those funds was secured by the Mortgage (the "Original Mortgage") dated as of March 6, 1998 executed by the Trustee and PalMet in favor of the City, which was recorded with the Recorder of Deeds of Cook County on March 9, 1998 as Document Number 98185693, as first amended by the First Amendment, and as second amended by the

Second Amendment (collectively, the Original Mortgage, as amended by the First Amendment and the Second Amendment, the "City Mortgage");

WHEREAS, pursuant to the Second Amendment, the Purchaser agreed to assume certain obligations of PalMet set forth in the RDA relating to the Hotel (the obligations set forth therein being referred to herein as the "Hotel Performance Covenants");

WHEREAS, pursuant to the Second Amendment, the Purchaser further agreed to take title to the Hotel subject to the Hotel Performance Covenants as of the Closing Date;

WHEREAS, as of the date of this Third Amendment, the Theater is no longer subject to a "Permanent Mortgage," as defined in the City Mortgage;

WHEREAS, as to the Theater, Palmet has agreed not to create or allow the creation of any future debt that would be treated as a Permanent Mortgage without the City's consent; and

WHEREAS, the parties desire to amend the City Mortgage to permit certain refinancings of the Office Building and the Hotel;

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

AGREEMENTS

1. Recitals. The recitals stated above are incorporated as a part of this Third Amendment.

2. Closing Conditions. The effectiveness of this Third Amendment is subject to the covenants and agreements contained herein, and the satisfaction of the following conditions:

(a) the execution of this Third Amendment by all parties and the recording of this Third Amendment;

(b) the delivery by Palmet to the City of a date down endorsement to lender's title insurance policy #7709367 in the most recently revised ALTA or equivalent form, (i) showing the City as the insured, (ii) noting the recording of this Third Amendment as an encumbrance against the Property, (iii) with respect to the Office Parcel and the Hotel Parcel, showing the City Mortgage and this Third Amendment subject only to Permanent Mortgage(s) in favor of the Senior Lender(s) that satisfy the requirements of Section 2.4 of the City Mortgage, as amended by this Third Amendment, and (iv) with respect to the Theater Parcel, showing the City Mortgage and this Third Amendment subject to no other mortgage encumbrances;

(c) the contribution by PalMet to the City of \$200,000 to be used for public improvements determined by the City;

(d) the delivery by PalMet, Purchaser and 134 N. LaSalle to the City of completed Economic Disclosure Statement(s), in the City's then current form; and

(e) the delivery by PalMet, Purchaser and 134 N. LaSalle to the City of the following documents accompanied by a certificate of the secretary or authorized officer of each entity certifying them as true, correct and complete copies that have not been amended or modified: (i) Articles of Organization, Operating Agreement, Certificate of Limited Partnership or Partnership Agreement, as applicable, (ii) good standing certificate, (iii) written consent or resolutions authorizing the execution of this Third Amendment, and (iv) evidence of incumbency.

3. Amendment to City Mortgage. Section 2.4 of the City Mortgage, Subordination, is deleted in its entirety and replaced by the following:

Mortgagee by acceptance of the Mortgage acknowledges that:

(a) for purposes of this Mortgage, "**First Mortgage**" shall mean any mortgage from Mortgagor in favor of a lender providing Lender Financing for the Project which has been reflected as Lender Financing in the Redevelopment Agreement; "**Permanent Mortgage**" shall mean any mortgage that replaces the First Mortgage (or any Permanent Mortgage); and "**Senior Lender**" shall mean the lender under any First Mortgage or any Permanent Mortgage; and

(b) this Mortgage shall be subject and subordinate in all respects to any Permanent Mortgage secured solely by the Office Building in favor of a Senior Lender and which secures financing in a principal amount not to exceed 87% of the then-current appraised fair market value of the Office Building, such appraisal to be prepared by an MAI appraiser approved by the City and such appraiser and appraisal to be acceptable to the City in its reasonable discretion; and the agreement by the Mortgagee to be subordinate to a Permanent Mortgage on the terms described in this Section 2.4(b) shall be reflected by a subordination agreement reasonably acceptable to the Mortgagee between the Mortgagee and the Senior Lender named as the mortgagee under such Permanent Mortgage; at the request of such Senior Lender; and

(c) this Mortgage shall be subject and subordinate in all respects to any Permanent Mortgage secured solely by the Hotel in favor of a Senior Lender and which secures financing in a principal amount not to exceed 85% of the then-current appraised fair market value of the Hotel, such appraisal to be prepared by an MAI appraiser approved by the City and such appraiser and appraisal to be acceptable to the City in its reasonable discretion; and the agreement by the Mortgagee to be subordinate to a Permanent Mortgage on the terms described in this Section 2.4(c) shall be reflected by a subordination agreement reasonably acceptable to the Mortgagee between the Mortgagee and the Senior Lender named as the mortgagee under such Permanent Mortgage, at the request of such Senior Lender; and

(d) the Developer shall not incur or permit the incurrence of any indebtedness secured by the Theater without the City's prior written consent.

4. Exercise of Remedies. Upon execution of this Third Amendment:

(a) If an Event of Default shall have occurred under the RDA with respect to the Use and Performance Covenants other than the Hotel Performance Covenants or the Purchaser Performance Covenants, Mortgagee agrees to pursue remedies under the City Mortgage, as amended by this Third Amendment, only against the Theater and not against the Hotel or the Office Building;

(b) If an Event of Default shall have occurred under the RDA with respect to the Purchaser Performance Covenants, the City agrees to pursue remedies under the City Mortgage, as amended by this Third Amendment, only against the Office Building or the Theater and not against the Hotel; and

(c) If an Event of Default shall have occurred under the RDA with respect to the Hotel Performance Covenants, Mortgagee agrees to seek remedies under the City Mortgage, as amended by this Third Amendment, first against the Hotel; provided, however, that notwithstanding the foregoing, Mortgagee specifically retains the right to pursue remedies under the City Mortgage, as amended by this Third Amendment, against the Theater regardless of whether it has exhausted its remedies against the Hotel; and

(d) this Third Amendment shall have no effect on the City's rights to pursue remedies against the Office Building on the terms and conditions described in the City Mortgage, as amended by this Third Amendment.

5. Covenants, Representations and Warranties of PalMet, Purchaser and 134 N. LaSalle. Each of PalMet, Purchaser and 134 N. LaSalle covenants, represents and warranties that:

(a) such party has the right, power and authority to enter into, execute, deliver and perform this Third Amendment. The execution, delivery and performance by such party of this Third Amendment has been duly authorized by all necessary action, and does not and will not violate its Articles of Organization, Operating Agreement, Certificate of Limited Partnership or Partnership Agreement, as applicable, any applicable provision of law, or constitute a breach of, default under or require the consent under any agreement, instrument or document to which such party is now a party or by which such party is now or may become bound; and

(b) such party is not in default with respect to any provision of the RDA, the City Mortgage or, with respect to Palmet, the Consent Decree (as defined below).

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

7. No Effect on Recording Priority of RDA or City Mortgage. The parties agree that entering into this Third Amendment shall have no effect on the recording priority of the RDA or the City Mortgage (or any outstanding subordination agreement that might relate thereto) and that this Third Amendment shall relate back to the dates that each of the RDA and the City Mortgage (or any outstanding subordination agreement that might relate thereto) were originally recorded in the land title records of Cook County, Illinois.

8. No Change in Defined Terms. All capitalized terms not otherwise defined herein, shall have the same meanings as set forth in the RDA.

9. Other Terms in the RDA and the City Mortgage Remain; Conflict. (a) Except as explicitly provided in this Third Amendment, all other provisions and terms of the RDA and the City Mortgage shall remain unchanged.

(b) In the event of a conflict between any provisions of this Third Amendment and the provisions of the City Mortgage or the RDA, the provisions of this Third Amendment shall control. Other than as specifically modified hereby, the terms and conditions of the City Mortgage and the RDA shall remain in effect with respect to the parties thereto.

(c) The City acknowledges and agrees that the Certificate (as defined in the RDA) has been issued.

10. Representations and Warranties of Palmet. Palmet acknowledges and agrees that, notwithstanding any other terms or provisions of this Third Amendment to the contrary, Palmet shall remain liable for all of its obligations and liabilities under the RDA, the City Mortgage and the settlement agreement in Circuit Court Case # 00M1-404032, as approved by the Court on June 15, 2001 (the "Consent Decree"), pursuant to which PalMet agreed to perform repairs to the exterior walls of the Office Building, until such obligations are satisfied.

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

12. Recording and Filing. PalMet shall cause this Third Amendment to be recorded and filed on the date hereof against the Property legally described in Exhibit A and Exhibit B hereto in the conveyance and real property records of the county in which the Property is located. PalMet shall pay all fees and charges incurred in connection with any such recording. Upon recording, PalMet shall immediately transmit to the City an executed original of this Third Amendment showing the date and recording number of record.

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

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

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

16. Binding Effect. This Third Amendment shall be binding upon PalMet, the Trustee, the City, the Purchaser, 134 N. LaSalle, and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of PalMet, the Trustee, the City, the Purchaser, 134 N. LaSalle and their respective successors and permitted assigns (as provided herein).

17. No Business Relationship with City Elected Officials. Pursuant to 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 of the Municipal Code of Chicago), 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 the RDA, the City Mortgage or this Third Amendment or in connection with the transactions contemplated hereby and thereby, shall be grounds for termination of the RDA, the City Mortgage or this Third Amendment and the transactions contemplated hereby and thereby. Each of Palmet, the Trustee, the Purchaser and 134 N. LaSalle 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 Third Amendment or the transactions contemplated thereby.

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

PALMET VENTURE L.L.C.,
an Illinois limited liability company

By: Palace Theatre, LLC
a Delaware limited liability company

By: RERC/PalMet, L.L.C.,
an Illinois limited liability company
Its: Managing Member

By: _____
Name: Michael A. Moyer
Its: Managing Member

CHICAGO TITLE INSURANCE COMPANY,
not personally but solely as successor trustee to
LaSalle Bank National Association,
not personally, but solely
as successor Trustee to American National
Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated
November 19, 1996 and known as Trust No. 122332-01

By: _____
Name: _____
Its: _____

CITY OF CHICAGO

By: _____
Commissioner, Department
of Planning and Development

CLPF – BISMARCK HOTEL VENTURE, L.P.,
a Delaware limited partnership,
its Sole Member

By: **CLPF – BISMARCK HOTEL GP, LLC,**
a Delaware limited liability company,
its General Partner

By: **CLPF – West Randolph, L.P.,**
a Delaware limited partnership,
its Sole Member

By: **CLPF – West Randolph GP, LLC,**
a Delaware limited liability company,
its General Partner

By: **Clarion Lion Properties Fund Holdings, L.P.,**
a Delaware limited partnership,
its Sole Member

By: **CLPF-Holdings, LLC,**
a Delaware limited liability company,
its General Partner

By: **Clarion Lion Properties Fund Holdings
REIT, LLC,** a Delaware limited liability company,
its Sole Member

By: **Clarion Lion Properties Fund, LLC,**
a Delaware limited liability company,
its Managing Member

By: **ING Clarion Partners, LLC,**
a New York limited liability company,
its Manager

By: _____
Name: _____
Title: _____

134 N. LASALLE LLC,
an Illinois limited liability company

By: _____
Name: Laurence H. Weiner
Title: Manager

By: _____
Name: Gerald L. Nudo
Title: Manager

11/5/2008

REPORTS OF COMMITTEES

43049

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

I, _____ a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael A. Moyer, personally known to me to be the managing member of RERC/PalMet, L.L.C., an Illinois limited liability company which is the managing member of Palace Theatre, LC, a Delaware limited liability company, which is the managing member of PalMet Venture L.L.C., an Illinois limited liability company, 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 as the managing member of RERC/PalMet, L.L.C., as his free and voluntary act and as the free and voluntary act of the RERC/PalMet, L.L.C., for the uses and purposes therein set forth.

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

Notary Public

My Commission Expires _____

(SEAL)

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

I, _____ a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of Chicago Title Insurance Company, not personally, but solely as successor trustee to LaSalle Bank National Association, successor trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated November 19, 1996 and known as Trust No. 122332-01 (the "Trustee"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by the Trustee, as his/her free and voluntary act and as the free and voluntary act of the Trustee, for the uses and purposes therein set forth.

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

Notary Public

My Commission Expires _____

(SEAL)

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

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

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

Notary Public

My Commission Expires _____

(SEAL)

STATE OF _____)
)
COUNTY OF _____) ss

I, _____ a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of CLPF – Bismarck Hotel Venture, L.P., a Delaware limited partnership, 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 as the _____ of CLPF – Bismarck Hotel Venture, L.P., for the uses and purposes therein set forth.

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

Notary Public

My Commission Expires _____

(SEAL)

STATE OF ILLINOIS)
)
 COUNTY OF COOK) ss

I, _____ a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Laurence H. Weiner, personally known to me to be a Manager of 134 N. LaSalle, LLC, an Illinois limited liability company, 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 as a Manager of 134 N. LaSalle, LLC, for the uses and purposes therein set forth.

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

 Notary Public

My Commission Expires _____

(SEAL)

STATE OF ILLINOIS)
)
 COUNTY OF COOK) ss

I, _____ a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gerald L. Nudo, personally known to me to be a Manager of 134 N. LaSalle, LLC, an Illinois limited liability company, 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 as a Manager of 134 N. LaSalle, LLC, for the uses and purposes therein set forth.

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

 Notary Public

My Commission Expires _____

(SEAL)

(Sub)Exhibits "A" and "B" referred to in this Third Amendment to Mortgage read as follows:

(Sub)Exhibit "A".
(To Third Amendment To Mortgage)

Legal Description.

Original Lots 1 to 4 (except that part of the original Lot 1 taken for widening North LaSalle Street) in Block 40 in Original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Numbers:

17-09-445-001-0000;

17-09-445-002-0000;

17-09-445-003-0000;

17-09-445-004-0000;

17-09-445-005-0000; and

17-09-445-006-0000.

Common Addresses:

134 North LaSalle Street
Chicago, Illinois.

171 West Randolph
Chicago, Illinois.

(Sub)Exhibit "B".
(To Third Amendment To Mortgage)

Legal Descriptions For Each Parcel.

Hotel Parcel.

Lot 2*, 2B, 2, 2A*, 2C, 2D, 2E*, 2F* and 2C* in Palace Block Subdivision, recorded December 5, 2001 as Document Number 011148236 and Letter of Correction recorded

June 13, 2002 as Document Number 0020663404, being a subdivision of part of Block 40 of Original Town of Chicago, in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Office Parcel.

Lots 1*, 1 and 1A* in Palace Block Subdivision, recorded December 5, 2001 as Document Number 0011148236, being a subdivision of part of Block 40 of Original Town of Chicago, Section 9, Township 39 North, Range 14, East of Third Principal Meridian, in Cook County, Illinois.

Theater Parcel.

Lots 3, 3A, 3D and 3* in Palace Block Subdivision, recorded December 5, 2001 as Document Number 0011148236, being a subdivision of part of Block 40 of Original Town of Chicago, in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Common Addresses:

134 North LaSalle Street
Chicago, Illinois.

171 West Randolph
Chicago, Illinois.

Permanent Index Numbers:

17-09-445-001-0000;

17-09-445-002-0000;

17-09-445-003-0000;

17-09-445-004-0000;

17-09-445-005-0000; and

17-09-445-006-0000.