

COPY

**GROSSINGER CITY AUTOCORP, INC.
REDEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF CHICAGO

AND

GROSSINGER CITY AUTOCORP, INC.

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

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

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

GROSSINGER CITY AUTOCORP, INC. REDEVELOPMENT AGREEMENT

This Grossinger City Autocorp, Inc. Redevelopment Agreement (this "**Agreement**") is made as of this _____ day of November, 2008, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and Grossinger City Autocorp, Inc., an Illinois corporation (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 January 9, 2008: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the

Weed/Fremont Redevelopment Project Area”; (2) “An Ordinance of the City of Chicago, Illinois Designating the Weed/Fremont Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act”; and (3) “An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Weed/Fremont Redevelopment Project Area” (the “**TIF Adoption Ordinance**”) (items(1)-(3) collectively referred to herein as the “**TIF Ordinances**”). The redevelopment project area referred to above (the “**Redevelopment Area**”) is legally described in **Exhibit A** hereto.

D. The Project: The Developer intends to lease (the “**Lease**”) certain property located within the Redevelopment Area at 1500 North Dayton Street, Chicago, Illinois 60622 and legally described on **Exhibit B** hereto (the “**Property**”), and, within the time frames set forth in **Section 3.01** hereof, shall commence the rehabilitation of an approximately 300,000 square foot building (the “**Facility**”) thereon. The building will be used to relocate Developer’s Toyota, Scion and possibly Cadillac dealerships currently located at 1233 North Wells Street, Chicago, Illinois 60610. Additionally, Developer will establish a new dealership (either General Motors or Honda) at the Property. The project will convert the Facility into a state of the art Sales and Service Center. 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 Weed/Fremont Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan and Project (the “**Redevelopment Plan**”) attached hereto as **Exhibit D**.

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

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.

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

“Available Incremental Taxes” shall mean an amount equal to the Incremental Taxes deposited in the Weed/Fremont Redevelopment Project Area TIF Fund attributable to the taxes levied on the Property as adjusted to reflect the amount of the City Fee described in **Section 4.05(b)** hereof.

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

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

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

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

“City Funds” shall mean the funds paid to the Developer pursuant to the City Note.

“City Note” shall mean the Tax Increment Allocation Revenue Note (Grossinger City Autocorp Redevelopment Project) Taxable Series 2008, to be in the form attached hereto as **Exhibit M**, in the maximum principal amount of \$8,500,000, issued by the City to the Developer as provided herein. The City Note shall be taxable and shall bear interest at an annual rate that is the median value of the 10-year Treasury rate for 15 business days prior to the issuance date plus 275 basis points, not to exceed eight percent (8%) and shall not provide for accrued, but unpaid, interest to bear interest at the same annual rate. The amount of the City Note shall be the lesser of \$8,500,000 or 22.4% of the total final Project Cost. The City Note shall be issued at the Completion Date and will begin accruing interest from the Completion Date.

“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.

“Completion Date” shall mean the date the City issues its Certificate.

“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.

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

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

“Equity” shall mean funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in **Section 4.01** hereof, which amount may be increased pursuant to **Section 4.06** (Cost Overruns) 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 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 Weed/Fremont TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

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

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

“MBE(s)” shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City’s Department of Procurement Services, or otherwise certified by the City’s Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

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

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

“Non-Governmental Charges” shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer, the Property or the Project (to the extent that the Developer is responsible for any Non-Governmental Charges pursuant to the Lease).

“Permitted Liens” shall mean those liens and encumbrances against the Lease, 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.

“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.

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

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

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

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

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

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

“Survey” shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property 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 the earlier to occur of: (a) December 31, 2032, and (b) the date on which the final payment of City Funds is made under this Agreement.

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

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

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

“Title Company” shall mean First American Title Insurance Company.

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

“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.

“Weed/Fremont 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.

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Developer shall, pursuant to the Plans

and Specifications and subject to the provisions of **Section 18.17** hereof: (i) commence construction no later than October 1, 2008; and (ii) complete construction and conduct business operations therein no later than fifteen (15) months after commencing construction.

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

3.03 Project Budget. The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Thirty-Seven Million Seven Hundred Ninety-Four Thousand One Hundred Sixty-Seven Dollars (\$37,794,167). The Developer hereby certifies to the City that (a) the Lender Financing and Equity described in **Section 4.02** hereof, shall be sufficient to complete the Project and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to 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 five percent (5%) or elimination of any accessibility or adaptability features; (b) a change in the use of the Property to a use other than an automobile sales and service center; (c) a delay in the completion of the Project by more than ninety (90) days; or (d) Change Orders costing more than ten percent (10%) of the Project budget. 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 ten percent (10%) of the Project Budget, 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 and Survey Updates. The Developer shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised Completion Date, if necessary (with any change in Completion Date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**). The Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect. An independent agent or architect (other than the Developer's architect) 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.

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

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

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

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

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$37,794,167, 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)	\$8,407,357
Lender Financing	\$12,386,810
Construction Financing	\$17,000,000
ESTIMATED TOTAL	\$37,794,167

4.02 Developer Funds. Equity and/or Lender Financing shall be used to pay all Project costs, including but not limited to Redevelopment Project costs and costs of TIF-Funded Improvements. Developer may reduce the Equity contribution required by **Section 4.01** without the City's consent, provided that the Equity contribution remains a minimum of twenty percent (20%) of the total Project costs. Developer may increase its Equity contribution without the permission of the City.

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. City Funds shall not be paid to the Developer hereunder prior to the issuance of a Certificate.

(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 issue the City Note to the Developer on the Completion Date. The principal amount of the City Note shall be in an amount equal to the costs of the 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 \$8,500,000 or 22.4% of the actual total Project costs; and provided, however, that is the actual total project costs (exclusive of Developer fees) upon completion of the Project are less than the estimated total Project costs itemized in the Project Budget at **Exhibit F** then the principal amount of the City Note will be reduced by \$.50 for every \$1.00 the actual Project costs is below the Project Budget; and provided, however, that payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the Weed/Fremont TIF Fund being sufficient for such payments.

(c) **City Note.** The City will issue the City Note, in the form attached hereto as **Exhibit L**, to the Developer at the Completion Date in an initial principal amount equal to the costs of the 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 \$8,500,000. Payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the Weed/Fremont TIF Fund being sufficient for such payments. Interest on the City Note will begin to accrue at the City Note interest rate upon the Completion Date and will compound annually. Payments of principal and interest on the City Note shall be made as set forth below, provided that no payments shall be made prior to the Completion Date.

(i) Payments on the City Note. The City Note in the form attached hereto as Exhibit L will have a maturity date twenty (20) years after the date of issuance. The first payment and subsequent annual payments (from Available Incremental Taxes received by the City in the prior year) with respect to the City Note shall be made on or before March 1 of the year following the City's receipt of a Requisition Form in accordance with Section 4.04, provided, however, that the final payment shall be made on or before December 31, 2031. If, in any year, the City does not make such scheduled annual payment, then, in the next year, (and if required, any subsequent years), Available Incremental Taxes shall first be applied to repay any shortfall amounts, with the applicable interest added to the outstanding principal amount, and then applied to make such year's scheduled annual payment. In the event Available Incremental Taxes are more than sufficient to pay the scheduled annual payment (and no shortfall amounts remain unpaid) the City, in its sole discretion, may elect to use such excess Available Incremental Taxes to repay the City Note or for any other legal use that the City may deem necessary or appropriate.

(ii) Pledge, Sale or Assignment of the City Note. After its issuance, Developer may pledge the City Note to a lender providing Lender Financing and after the City has had an opportunity to review the loan commitment and security documents. 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 and in the City Note. After its issuance Developer may sell or assign (other than for collateral purposes) the City Note, but only to a Qualified Investor or Affiliate with no view to resale and pursuant to an acceptable investment letter and in a manner and on terms, including debt service schedule, otherwise reasonably acceptable to the City.

(iii) Other Incremental Taxes. Any Incremental Taxes that either (a) are not Available Incremental Taxes or (b) are not required to make payments under this Agreement (whether because all currently due payments have been made, because of the failure to issue 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.

(iv) Insufficient Available Incremental Taxes. If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any payment on the City Note, then: (1) the City will not be in default under this Agreement or the City Note, and (2) due but unpaid payments (or portions thereof) on the City Note will be paid as provided in this Section 4.03 as promptly as funds become available for their payment.

(d) Conditions on Payment. City Funds derived from Available Incremental Taxes shall be available to pay such costs and allocated for such purposes only so long as:

- (1) The amount of the Available Incremental Taxes is sufficient to pay for such costs;
- (2) The City has been paid the City Fee described in **Section 4.05(b)** below;
- (3) No Event of Default or condition for which the giving of notice or the passage of time, or both, would constitute an Event of Default exists under this Agreement; and
- (4) No Occupancy Default exists under this Agreement.

The Developer acknowledges and agrees that the City's obligation to pay any City Funds is contingent upon the fulfillment of the conditions set forth in parts (1), (2), (3) and (4) above, as well as the prior issuance of the Certificate and the Developer's satisfaction of all other applicable terms and conditions of this Agreement, including, without limitation, compliance with the covenants in **Section 8.05**.

4.04 Requisition Form. On or before each December 1 of the year following the Completion Date and continuing throughout the earlier of (i) the Term of the Agreement or (ii) the date that the Developer has been reimbursed in full under this Agreement, the Developer shall provide DPD with a Requisition Form, along with the documentation described therein. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per calendar year (or as otherwise permitted by DPD). At DPD's request, following the submission of a Requisition Form and continuing throughout the Term of the Agreement the Developer shall meet with DPD at the request of DPD to discuss the Requisition Form(s) previously delivered.

4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

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

(b) City Fee. Annually, the City may allocate an amount not to exceed five percent (5%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

(c) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of DPD, being

prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$25,000 or \$100,000 in the aggregate, may be made without the prior written consent of DPD.

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 [Omitted].

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

SECTION 5. CONDITIONS PRECEDENT

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

5.01 Project Budget. The Developer has submitted to 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/or 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 and other sources 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 Developer's leasehold interest in the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form substantially similar to **Exhibit O**, 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 Lease 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 8.18** hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's comprehensive endorsement and 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 lease of the Property, including the Lease, and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. The Developer, at its own expense, has provided the City with searches under the Developer's name as follows:

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

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

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

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

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

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

5.11 Financial Statements. The Developer has provided Financial Statements to DPD for its most recent three (3) fiscal years, 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. The Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

5.14 Corporate Documents; Economic Disclosure Statement. The Developer has provided a copy of its Articles or Certificate of Incorporation containing the original certification of the Secretary of State of its state of incorporation; certificates of good standing from the Secretary of State of its state of incorporation and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws of the corporation; 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.

5.16 Lease. A complete copy of the Lease, and all other written agreements setting forth the parties' understandings relating to the Developer's relocation to or occupancy of the Property and any financial agreements between the parties in any way relating to the Property or the Lease, certified by the Developer, shall have been delivered to the City.

SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 General Contractor and Subcontractors. Prior to entering into an agreement with a General Contractor, the Developer shall solicit bids from qualified contractors eligible to do business with the City of Chicago, and shall submit all bids received to DPD. 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 by the General Contractor in connection with the TIF-Funded Improvements shall be provided to DPD within ten (10) 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. As of the Closing Date, Developer has identified the General Contractor to DPD, and DPD has approved the hiring of the General Contractor.

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 P** hereto. The City shall be named as obligee or co-obligee on any such bonds.

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

6.05 Other Provisions. In addition to the requirements of this **Section 6**, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to **Section 3.04** (Change Orders), **Section 8.09** (Prevailing Wage), **Section 10.01(e)** (Employment Opportunity), **Section 10.02** (City Resident Employment Requirement), **Section 10.03** (MBE/WBE Requirements, as applicable), **Section 12** (Insurance) and **Section 14.01** (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof.

SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon completion of the rehabilitation 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 Project in accordance with the terms of this Agreement. 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. The Certificate will not be issued until the following conditions have been met:

(a) the Developer has notified the City in writing that the Project has been completed as it is defined in this Agreement;

(b) verification in writing by the City's Monitoring and Compliance Unit that the developer is in full and complete compliance with the City's MBE/WBE, City residency and prevailing wage requirements;

(c) the Developer has satisfied all environmental requirements with respect to LEED certification and matters described in **Section 11** of this Agreement; and

(d) the City has issued a Certificate of Occupancy for the Project.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates

only to the rehabilitation 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, 8.06, 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; and

(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.

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

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

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

(a) the Developer is an Illinois corporation 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 corporate action, and does not and will not violate its Articles of Incorporation or by-laws as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Developer shall acquire and shall maintain its leasehold interest to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to **Section 8.15** hereof).

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

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

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

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

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

(j) prior to the issuance of 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 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; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens

against the Lease or the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget; and

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

(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) As of the Closing Date, the Developer is not in default with respect to the Lease.

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 leasehold interest in the Property and be binding upon any transferee of such leasehold interest, 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; provided, however, that any such amendments shall not have a material adverse effect on the Developer or the Project. The Developer shall, at the Developer's expense, cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto.

8.06 Job Creation and Retention; Covenant to Remain in the City. Not less than sixty-seven (67) full-time equivalent, permanent jobs shall be retained by the Developer at the Project at the completion thereof; not less than forty-three (43) additional full-time equivalent, permanent jobs shall be created by the Developer at the completion of the Project; and not less than fifteen (15) additional full-time equivalent, permanent jobs shall be created by the Developer within three (3) years of completion of the Project, for a total of one hundred twenty-five (125) full-time equivalent, permanent jobs to be retained or created by the Developer at the Facilities through the Term of the Agreement. The Developer hereby covenants and agrees to maintain its operations within the City of Chicago at the site described above through the Term of the Agreement. The covenants set forth in this Section shall run with the leasehold interest and be binding upon any transferee of this Agreement or the Lease.

8.07 Employment Opportunity; Progress Reports. The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in **Section 10** hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.09, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.]

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

8.09 Prevailing Wage. The Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this **Section 8.09**.

8.10 Arms-Length Transactions. Unless DPD has given its prior written consent with respect thereto, no Affiliate of the Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. The Developer shall provide information with respect to any entity to

receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer and reimbursement to the Developer for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement.

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

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

8.13 Financial Statements. The Developer shall obtain and provide to DPD Financial Statements for the Developer's fiscal year ended 2007 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.

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

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

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this **Section 8.15**); or

(ii) at DPD's sole option, to furnish a good and sufficient bond or other

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

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

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

8.18 Recording and Filing. The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of the county in which the Project is located. The Developer shall obtain all consents and signatures from the owner of the Property that are necessary to record and file this Agreement. 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. The City acknowledges that this Agreement shall be recorded and filed against the Property only with respect to and to the extent of the Developer's leasehold interest in the Property pursuant to the Lease and shall not constitute a lien against or interest in the fee interest in or title to the Property.

8.19 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 Project or the Property (to the extent required by the Lease), or become due and payable, and which create or may create a lien upon the Developer or all or any portion of the Lease, the Property or the Project (to the extent required by the Lease). "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 Lease, 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 leasehold interest in the Property. The Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in **Section 8.19(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 (to the extent required by the Lease). 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 leasehold interest in 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 leasehold interest in 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 that is necessary to support the debt service indicated ("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 8.19(c)** are covenants running with the leasehold interest in the Property 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 its interest to all or any portion of its leasehold interest in 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 8.19(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 8.19(c)**.

8.20 Public Benefits Program. The Developer shall undertake a public benefits program

as described on **Exhibit N**. On a semi-annual basis, the Developer shall provide the City with a status report describing in sufficient detail the Developer's compliance with the public benefits program.

8.21 Job Readiness Program. The Developer shall undertake a job readiness program to work with the City, through the Mayor's Office of Workforce Development, to participate in job training programs to provide job applicants for the jobs created by the Project and the operation of the Developer's business on the Property.

8.22 Lease. Throughout the Term of the Agreement the Developer shall not (a) execute or consent to a Material Amendment or (b) sell, sublease, release, assign or otherwise transfer its interest in the Lease without the prior written consent of DPD, which consent shall not be unreasonably denied.

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

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

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

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

SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "**Human Rights Ordinance**"). Each Employer shall take affirmative action to ensure that

applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

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

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

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

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

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

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

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

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

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

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

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

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

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

When work at the Project is completed, in the event that the City has determined that the Developer has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the

certification of payroll data may subject the Developer, the General Contractor and/or the subcontractors to prosecution. **Any retainage to cover contract performance that may become due to the Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Developer must surrender damages as provided in this paragraph.**

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

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

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

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "**Procurement Program**"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "**MBE/WBE Program**"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following percentages of the 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 monthly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on five Business Days' notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

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

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

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

SECTION 11. ENVIRONMENTAL MATTERS

11.01 Environmental Studies. 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.

11.02 Indemnification. 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 all or any portion of the Property, or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

11.03 Green Roof and LEED Certification. The Facility shall include a green roof of a minimum of 10,000 square feet and achieve LEED certification. All green roof plans must be approved by DPD.

11.04 Other Requirements. Developer agrees to recycle all automotive fluids and to install, use and maintain an exhaust and air filtration system approved by the City.

SECTION 12. INSURANCE

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

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

(i) Workers Compensation and Employers Liability Insurance

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

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

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

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

(b) Construction

(i) Workers Compensation and Employers Liability Insurance

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

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

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

(iii) Automobile Liability Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

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

(v) Builders Risk Insurance

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

(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

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

(c) Term of the Agreement

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

business interruption/loss of rents, flood and boiler and machinery, if applicable. The City of Chicago is to be named an additional insured on a primary, non-contributory basis.

(d) Other Requirements

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

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

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

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

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

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

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

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

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

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

SECTION 13. INDEMNIFICATION

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

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

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

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

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

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

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. The Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the

Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense. The Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer with respect to the Project.

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

SECTION 15. DEFAULT AND REMEDIES

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

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

(b) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity 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;

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

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

(k) prior to the expiration of the Term of the Agreement, the sale or transfer of a majority of the ownership interests of the Developer without the prior written consent of the City.

For purposes of **Sections 15.01(i)** and **15.01(j)** hereof, a person with a material interest in the Developer shall be one owning in excess of 7.5 (7.5%) of the Developer's issued and outstanding shares of stock.

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

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

that there shall be no cure period under this Section 15.03 with respect to the Developer's failure to comply with the job retention/creation/operation requirements of Section 8.06 hereof.

SECTION 16. LIENING OF THE PROJECT

All liens securing moneys owed or other security interests in place as of the date hereof with respect to the Lease, the Project or any portion thereof or any fixtures thereon or therein are listed on Exhibit G hereto and are referred to herein as the "Existing Liens." Any security agreement that the Developer may hereafter elect to execute and/or record or permit to be recorded against the Lease, the Project or any portion thereof or any fixtures thereon or therein is referred to herein as a "New Lien". Any New Lien that the Developer may hereafter elect to execute and record or permit to be recorded against the Lease, the Project or any portion thereof or any fixtures thereon or therein, after having given ten (10) days advance written notice to the City of its intent to do so, is referred to herein as a "Permitted Lien." Upon request, the Developer shall provide the City with copies of all documents related to a Permitted Lien. For purposes of this Section 16, "fixtures" shall not include trade fixtures, personal property or equipment. It is hereby agreed by and between the City and the Developer as follows:

(a) In the event that a secured party or any other party shall succeed to the Developer's interest in the Lease, the Project or any portion thereof or any fixtures thereon or therein pursuant to the exercise of remedies under a New Lien (other than a Permitted Lien), 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 secured party shall succeed to the Developer's interest in the Lease, the Project or any portion thereof or any fixtures thereon or therein pursuant to the exercise of remedies under an Existing Lien or a Permitted Lien, 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 secured party under a Permitted Lien or an Existing Lien 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 Lien shall be executed with respect to the Lease, the Project or any portion thereof without the prior written consent of the Commissioner of DPD.

SECTION 17. NOTICE

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

If to the City:	City of Chicago Department of Planning and Development 121 North LaSalle Street, Room 1000 Chicago, IL 60602 Attention: Commissioner
With Copies To:	City of Chicago Department of Law Finance and Economic Development Division 121 North LaSalle Street, Room 600 Chicago, IL 60602
If to the Developer:	Grossinger City Autocorp, Inc. 151 East Lake Cook Road Palatine, Illinois 60074
With Copies To:	Law Offices of Samuel V.P. Banks 221 North LaSalle Street, Suite 3800 Chicago, Illinois 60601

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, such ordinance(s) shall prevail and control.

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

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

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

18.15 Assignment. The Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City; **provided, however,** that Developer, after written notice to the City, may sell, assign or otherwise transfer its interest in this Agreement in whole or in part to an Affiliate without the written consent of the City. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.19 (Real Estate Provisions) and 8.23 (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, except that Developer shall not be required to pay if it can prove that its failure to perform under this Agreement was caused by the wanton or willful conduct of the City.. 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-judgement collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

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

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

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

GROSSINGER CITY AUTOCORP, INC.

By: 

Gary Grossinger, President

CITY OF CHICAGO

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


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

GROSSINGER CITY AUTOCORP, INC.

By: _____

Its: _____

CITY OF CHICAGO

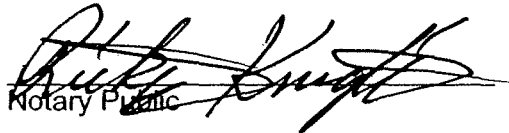
By:  _____

Arnold L. Randall, Commissioner
Department of Planning and Development

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

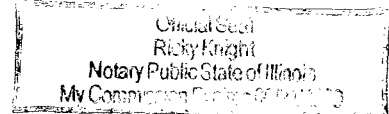
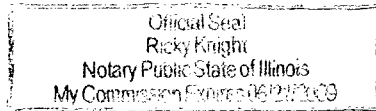
I, Ricky Knight, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gary Grossinger, personally known to me to be the President of Grossinger City Autocorp, Inc, an Illinois corporation (the "Developer"), and personally known to me to be the same person whose name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

GIVEN under my hand and official seal this 20th day of November, 2008.


Notary Public

My Commission Expires _____

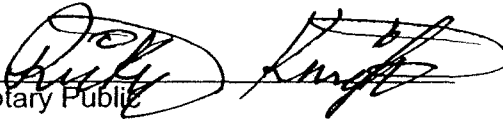
(SEAL)



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

GIVEN under my hand and official seal this 20th day of November, 2008.


Notary Public

My Commission Expires _____

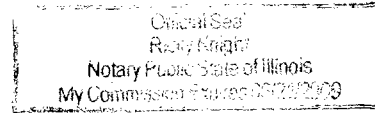
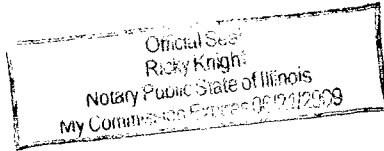


EXHIBIT A

REDEVELOPMENT AREA

THAT PART OF JOHN YALE'S RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 16 IN SAID BLOCK 40; THENCE NORTH 89 DEGREES 52 MINUTES 39 SECONDS EAST ALONG THE NORTH LINE OF LOTS 16 THROUGH 30 IN SAID BLOCK 40, AND THE EASTERLY PROJECTION THEREOF, 436.57 FEET INCLUSIVE, TO THE EAST LINE OF DAYTON STREET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE, 356.18 FEET TO THE EASTERLY PROJECTION OF THE NORTH LINE OF LOT 26 IN SAID BLOCK 44; THENCE SOUTH 89 DEGREES 53 MINUTES 18 SECONDS WEST ALONG SAID EASTERLY PROJECTION AND SAID NORTH LINE AND THE WESTERLY PROJECTION OF SAID NORTH LINE AND THE NORTH LINE OF LOT 16 IN SAID BLOCK 44, A DISTANCE OF 291.30 FEET TO THE SOUTHERLY PROJECTION OF THE WEST LINE OF LOT 9 IN SAID BLOCK 44; THENCE NORTH 00 DEGREES 00 MINUTES 24 SECONDS WEST ALONG SAID SOUTHERLY PROJECTION AND ALONG SAID WEST LINE AND ALONG A LINE DRAWN BETWEEN THE NORTHWEST CORNER OF SAID LOT 9 AND THE SOUTHEAST CORNER OF LOT 21 IN SAID BLOCK 40, A DISTANCE OF 187.14 FEET TO A LINE PARALLEL WITH AND 19.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTH LINE OF LOTS 16 THROUGH 21, BOTH INCLUSIVE, IN SAID BLOCK 40; THENCE SOUTH 89 DEGREES 52 MINUTES 39 SECONDS WEST ALONG SAID PARALLEL LINE, 211.21 FEET TO THE WEST LINE OF FREEMONT STREET; THENCE NORTH 00 DEGREES 00 MINUTES 45 SECONDS WEST ALONG SAID WEST LINE, 168.99 FEET TO THE WESTERLY PROJECTION OF THE NORTH LINE OF LOT 16 IN BLOCK 40 OF SAID JOHN YALE'S RESUBDIVISION; THENCE NORTH 89 DEGREES 52 MINUTES 39 SECONDS EAST ALONG SAID WESTERLY PROJECTION, 66.00 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

EXHIBIT B
PROPERTY

PARCEL 1:

LOTS 16 THROUGH 30 BOTH INCLUSIVE, IN BLOCK 40 IN JOHN YALE'S RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND LOTS 1 THROUGH 9 BOTH INCLUSIVE, ALL IN BLOCK 44 IN JOHN YALE'S RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND VACATED WEST WEED STREET LYING SOUTH OF THE SOUTH LINE OF LOTS 16 THROUGH 30, BOTH INCLUSIVE, IN BLOCK 40 LYING NORTH OF THE NORTH LINE OF LOTS 1 THROUGH 15 BOTH INCLUSIVE, IN BLOCK 44, EXCEPTING FROM THE AFORESAID VACATED WEST WEED STREET THAT PORTION THEREOF LYING EAST OF THE WEST LINE OF LOT 16 IN BLOCK 40 PROLONGATED SOUTHERLY TO THE NORTHWEST CORNER OF LOT 15 IN BLOCK 44, LYING WEST OF THE EAST LINE OF LOT 21 IN BLOCK 40 PROLONGATED SOUTHERLY OF THE NORTHEAST CORNER OF LOT 10 IN BLOCK 44, AND LYING SOUTH OF A LINE 14 FEET SOUTH AND PARALLEL WITH THE SOUTH LINE OF LOT 16 THROUGH 21 BOTH INCLUSIVE IN BLOCK 40 IN JOHN YALES' RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND THE EAST-WEST VACATED ALLEY, (EXCEPT THE WEST 145.22 FEET THEREOF) IN BLOCK 44 LYING SOUTH OF THE SOUTH LINE OF LOT 1 THROUGH 15, BOTH INCLUSIVE AND LYING NORTH OF THE NORTH LINE OF LOTS 16 AND 26 AND THE NORTH LINE OF LOT 16 PROLONGATED EASTERLY TO THE NORTHWEST CORNER OF LOT 26, ALL IN BLOCK 44 IN JOHN YALES RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND THE VACATED WEST ONE FOOT OF NORTH DAYTON STREET (INCLUDING THE INTERSECTION OF WEST WEED STREET AND WEST BLACKHAWK STREET) LYING EAST OF AND ADJOINING THE EAST LINE OF LOT 30 IN BLOCK 40, THE EAST LINE OF LOT 1 IN BLOCK 44, THE EAST LINE OF LOT 30 IN BLOCK 40 PROLONGATED SOUTHERLY TO THE NORTHEAST CORNER OF LOT 1 IN BLOCK 44, THE EAST LINE OF LOT 1 IN BLOCK 44, PROLONGATED SOUTHERLY TO THE NORTHEAST CORNER OF LOT 26 IN BLOCK 44 IN JOHN YALE'S RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR CONTINUED MAINTENANCE OF ENCROACHMENT AND FOR CONSTRUCTION AND MAINTENANCE ACCESS RIGHT, GRANTED BY RECIPROCAL EASEMENT AGREEMENT BY AND BETWEEN FURNITURE, LLC AN ILLINOIS LIMITED LIABILITY COMPANY AND TAMARLIN INVESTMENT PARTNERSHIP, AN ILLINOIS

LIMITED PARTNERSHIP, RECORDED MARCH 31, 2000 AS DOCUMENT 00228577 AND RE-RECORDED APRIL 28, 2000 AS DOCUMENT 00300566.

Common Address:

1500 North Dayton Street
Chicago, Illinois 60622

Property Identification Number:

17-05-209-015-000

EXHIBIT C

TIF-FUNDED IMPROVEMENTS

Rehabilitation	\$18,625,683.00 *
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***Notwithstanding the total of TIF-Funded Improvements, the assistance to be provided by the City is limited to a maximum of \$8,500,000 or 22.4% of the total Project costs.**

EXHIBIT D
REDEVELOPMENT PLAN

[See attached]

CITY OF CHICAGO

WEED/FREMONT REDEVELOPMENT PROJECT AREA
TAX INCREMENT FINANCING PROGRAM

REDEVELOPMENT PLAN AND PROJECT

CITY OF CHICAGO

RICHARD M. DALEY
MAYOR

AUGUST 2007

THIS REDEVELOPMENT PLAN IS SUBJECT TO REVIEW, COMMENTS, AND REVISION.

PREPARED BY
LOUIK/SCHNEIDER & ASSOCIATES, INC.

WEED/FREMONT REDEVELOPMENT PROJECT AREA

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I. Introduction

This document represents the Weed/Fremont Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan and Project (the "Plan") for the proposed redevelopment area known as Weed/Fremont Redevelopment Project Area (the "Redevelopment Project Area") in Chicago, Illinois. The Redevelopment Project Area is located on the north side of the City of Chicago (the "City"), three miles north of the City's central business district. It is bounded by the alley south of North Avenue on the north, just south of vacated West Weed Street on the south, North Fremont Street on the east and the North Dayton Street on the west (see the Appendix, Exhibit 1 "Legal Description" and Exhibit 3, Map – 1 Project Boundary). The Redevelopment Project Area comprises approximately 2.646 acres.

This Plan summarizes the analyses and findings of the consultant's work, which, unless otherwise noted, is the responsibility of Louik/Schneider & Associates, Inc. (the "Consultant"). The City is entitled to rely on the findings and conclusions of this Plan in designating the Redevelopment Project Area as a redevelopment project area under the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (2002 State Bar Edition), as amended (the "Act"). The Consultant has prepared this Plan and the related Eligibility Study and Housing Impact Study with the understanding that the City would rely on: (1) the findings and conclusions of the Plan and the related Eligibility Study in proceeding with the designation of the Redevelopment Project Area and the adoption and implementation of the Plan, and (2) the fact that the Consultant has obtained the information necessary for the Plan, the related Eligibility Study and the Housing Impact Study to comply with the Act.

As set forth in the Act, if the redevelopment plan for a redevelopment project area would result in the displacement of residents from 10 or more inhabited residential units, or if the redevelopment project area contains 75 or more inhabited residential units and a municipality is unable to certify that no displacement will occur, the municipality must prepare a housing impact study and incorporate the study in the redevelopment project plan. The Redevelopment Project Area contains 1 vacant commercial building. The Area contains less than 75 inhabited residential units and the City is willing to certify that no residential displacement will occur. Therefore, a housing impact study was not required and not completed.

II. Redevelopment Project Area and Legal Description

A. Existing Conditions

The Redevelopment Project Area current land use is commercial. The current uses surrounding the Redevelopment Project Area are industrial and commercial with the exception of some residential to the east of the Redevelopment Project Area (see Exhibit 3, Map 2 – Existing Land Use). The Redevelopment Project Area comprises approximately 2.646 acres covering approximately 1/3 of two combined blocks. The Redevelopment Project Area contains one building originally constructed for industrial use and was then converted to commercial use.

The Redevelopment Project Area is located within the Near North Side Community Area. The major north-south arterial street serving the Redevelopment Project Area is North Halsted Street on the east. The main east-west arterial street is North Avenue. The major local surface transportation access routes serving the Redevelopment Project Area and its surrounding community include North Avenue, and Division Street (east-west); and Clybourn and Elston Avenues (northwest-southeast). The Redevelopment Project Area is also well served by public transportation making the site easily accessible to the local work force. The 41 Elston/Clybourn, 70 Division, 72 North, and 73 Armitage CTA bus lines serve the Redevelopment Project Area. The major north/south CTA bus line (8 Halsted) is one block east of the Redevelopment Project Area. Directly west (approximately 1/4-1 mile) of the Redevelopment Project Area is the CTA Blue Line (O'Hare-Congress-Douglass) with stops at Chicago, Division, Damen and Western. The Chicago & North Western/North Line's Clybourn Station is located northwest of the Redevelopment Project Area at Armitage and Ashland Avenues.

Based on the 2007 Title 17 Municipal Code of Chicago Zoning Ordinance (Index Publishing Corporation), the Redevelopment Project Area includes zoning classifications for commercial and business districts. The Redevelopment Project Area is currently zoned C3-5.

B. Tax Increment Allocation Redevelopment Act

The Redevelopment Project Area is characterized by conditions that qualify it to be designated as an improved "Conservation Area" within the definitions set forth in the Act.

The Act provides a means for municipalities, after the approval of a redevelopment plan, designation of an area as a redevelopment project area, and adoption of tax increment allocation financing for such redevelopment project area, to redevelop blighted and conservation areas by pledging the incremental tax revenues generated by redevelopment in the redevelopment project area to projects in such redevelopment project area. These incremental tax revenues are used to pay for costs of public improvements that are required to stimulate private investment in new redevelopment and rehabilitation, or to reimburse private

developers for eligible costs incurred in connection with an approved development. Municipalities may issue obligations to be repaid from the stream of real property tax increment revenues generated within the redevelopment project area.

The property tax increment revenue is calculated by determining the difference between the initial equalized assessed valuations (EAV), as certified by the county clerk, for all taxable real estate located within the redevelopment project area, and the current year EAV. The EAV is the current assessed value of the property multiplied by the state multiplier. Any increase in EAV is then multiplied by the current tax rate, which determines the incremental real property tax.

III. Redevelopment Goals and Objectives

Comprehensive goals and objectives are included in this Plan to guide the decisions and activities that will facilitate the revitalization of the Redevelopment Project Area. Many of them can be achieved through the effective use of local, state, and federal mechanisms. These goals and objectives generally reflect existing City policies affecting all or portions of the Redevelopment Project Area. They are meant to guide the development and review of all future projects undertaken in the Redevelopment Project Area.

A. General Goals

- Reduce or eliminate those conditions that qualify the Redevelopment Project Area as a Conservation Area.
- Create an environment within the Redevelopment Project Area that will contribute to the health, safety, and general welfare of the City.
- Strengthen the economic well-being of the Redevelopment Project Area and the City by enhancing the properties and the local tax base to their fullest potential.
- Improve the quality of life for City residents by creating viable commercial businesses.
- Create new jobs within the Redevelopment Project Area.
- Encourage the participation of minorities and women in the redevelopment process of the Redevelopment Project Area.
- Act as a buffer between the commercial and residential communities.

B. Redevelopment Objectives

To achieve the general goals of this Plan, the following redevelopment objectives have been established:

- Revitalize and restore the physical and economic conditions of underutilized and vacant building.
- Use City programs, where appropriate, to create a unified identity that would enhance the marketability of the Redevelopment Project Area.

- Encourage private investment in rehabilitation of buildings in the Redevelopment Project Area.
- Provide public infrastructure improvements in the Redevelopment Project Area. Replace and repair adjacent streets, alleys, sidewalks, and curbs, where necessary.
- Establish job training and job-readiness programs to provide residents near the Redevelopment Project Area with skills necessary to secure jobs.
- Attract new sales tax and real estate tax dollars to the City of Chicago.

C. Design Guidelines

Although overall goals and redevelopment objectives are important in the process of redeveloping such an area, design guidelines are necessary to ensure that redevelopment activities result in an attractive and functional environment. The following design guidelines give a general, but directed, approach to the development of specific projects within the Redevelopment Project Area.

- Integrate new development which is functionally and aesthetically compatible with adjacent development.
- Ensure safe and functional circulation patterns for pedestrians and vehicles.

IV. Conservation Area Conditions in the Redevelopment Project Area

A. Illinois Tax Increment Act

The Act authorizes Illinois municipalities to redevelop locally designated deteriorated areas through tax increment financing. In order for an area to qualify as a tax increment financing district, it must first be designated as a Blighted Area, a Conservation Area (or a combination of the two), or an Industrial Park Conservation Area.

As set forth in the Act, a "Conservation Area" is any improved area within the boundaries of a redevelopment project area located within the territorial limits of the municipality in which 50% or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area, but because of a combination of three or more of the following factors is detrimental to public safety, health, morals, or welfare, and such an area may become a blighted area:

1. Dilapidation
2. Obsolescence
3. Deterioration
4. Presence of structures below minimum code standards
5. Illegal use of individual structures
6. Excessive vacancies
7. Lack of ventilation, light, or sanitary facilities
8. Inadequate utilities
9. Excessive land coverage and overcrowding of structures and community facilities
10. Deleterious land use or layout
11. Necessity of environmental clean-up
12. Lack of community planning
13. Equalized assessed values are declining or lower than the balance of the municipality

The Act states that no redevelopment plan shall be adopted unless a municipality complies with all of the following requirements: (1) the municipality finds that the redevelopment project area on the whole has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of the redevelopment plan and (2) the municipality finds that the redevelopment plan and project conforms to the comprehensive plan for the development of the municipality as a whole, or, for municipalities with a population of 100,000 or more, regardless of when the redevelopment plan and project was adopted, the redevelopment plan and project either: (i) conforms to the strategic economic development or redevelopment plan issued by the designated planning authority of the municipality, or (ii) includes land uses that have been approved by the planning commission of the municipality.

The Consultant conducted comprehensive exterior surveys of the all of the parcels in the Redevelopment Project Area to identify the eligibility factors and their degree of presence. The exterior surveys examined not only the condition and use of buildings, but also streets, sidewalks, curbs, gutters, lighting, underutilized land, landscaping, fences and walls, and general maintenance. In addition, an analysis was conducted of existing site coverage, land uses, zoning and its relationship to the surrounding area.

Based upon surveys, site inspections, research, and analysis by the Consultant, the Redevelopment Project Area qualifies as a Conservation Area as defined by the Act. A separate report, entitled *City of Chicago Weed/Fremont Tax Increment Financing Program Eligibility Study* dated August 2007 (the "Eligibility Study"), is attached as Exhibit 4 to this Plan. It describes in detail the surveys and analyses undertaken, and the basis for qualifying the Redevelopment Project Area as a Conservation Area.

B. Conservation Area Eligibility Factors

The Redevelopment Project Area consists of one PIN and one building in the Redevelopment Project Area. In addition to age, the Redevelopment Project Area is characterized by the presence of five Conservation Area eligibility factors defined below:

1. Obsolescence

Obsolescence is defined in the Act as "the condition or process of falling into disuse." Obsolescent structures have become ill-suited for their original use.

2. Deterioration

Deterioration refers to any physical deficiencies or disrepair in buildings or site improvements requiring major treatment or repair. The Act defines deterioration with respect to buildings as, "defects including, but not limited to, major defects in the secondary building components such as doors, windows, porches, gutters and downspouts, and fascia."

3. Excessive Vacancies

This factor refers to buildings that are unoccupied or underutilized and exert an adverse influence on the area because of the frequency, duration, or extent of vacancy.

4. Excessive Land Coverage and Overcrowding of Structures and Community Facilities

Excessive land coverage and overcrowding of structures and community facilities is defined by the Act as "the over-intensive use of property and the crowding of buildings and accessory facilities onto a site."

5. Deleterious Land Use or Layout

Deleterious layout includes evidence of improper or obsolete platting of the land, inadequate street layout, and parcels of inadequate size or shape to meet contemporary development standards. It also includes evidence of poor layout of buildings on parcels and in relation to other buildings.

6. Lack of Community Planning

Lack of community planning may be a factor if the proposed Redevelopment Project Area was developed prior to or without the benefit or guidance of a community plan.

C. Eligibility Findings Conclusion

The eligibility findings indicate that the Redevelopment Project Area qualifies as a Conservation Area as set forth in the Act. The number, degree, and distribution of factors as documented in this report warrant the designation as a Redevelopment Project Area. Specifically:

- The building in the Redevelopment Project Area meets the statutory criteria for age.
- Of the 13 eligibility factors for a Conservation Area set forth in the Act, six factors are present five to a major extent and one to a minor extent. In addition to age, only three are necessary for designation as a Conservation Area.
- The Conservation Area eligibility factors that are present are reasonably distributed throughout the Redevelopment Project Area.

The eligibility findings indicate that the Redevelopment Project Area contains factors that qualify it as a Conservation Area in need of revitalization and that designation as a redevelopment project area will contribute to the long-term enhancement of the City.

The Redevelopment Project Area has not benefited from growth and development as a result of investments by private enterprise, and will not be developed without action by the City. Despite significant efforts to find a tenant, the building has remained vacant for over two years due to conditions that will be described in the Eligibility Study. From this data, together with the other eligibility factors, it can be reasonably concluded that the Redevelopment Project Area (i) has not been subject to growth and development through private investment, and (ii) would not reasonably be anticipated to be developed without adoption of a redevelopment plan by the City. Adoption of the Redevelopment Plan and Project is necessary to halt deterioration of the Redevelopment Project Area.

The analysis above was based upon data assembled by the Consultant. The surveys, research, and analysis conducted include the following:

- Exterior surveys of the conditions and use of the Redevelopment Project Area;
- Field surveys of environmental conditions, including streets, sidewalks, curbs and gutters, lighting, traffic, landscaping, fences and walls, and general property maintenance;
- Comparison of current land uses to the current zoning ordinance and current zoning maps;
- Historical analysis of site uses and users;
- Analysis of original and current platting and building size layout;
- Review of previously prepared plans, studies, and data; and
- Evaluation of the EAVs in the Redevelopment Project Area from tax years 2000 to 2005.

The Redevelopment Project Area qualifies as an improved Conservation Area and is therefore eligible for Tax Increment Financing under the Act.

V. Weed/Fremont Redevelopment Project

This section defines the Redevelopment Project to be undertaken by both the City through its various departments and through private developers and/or individuals. The Redevelopment Project is outlined in the following sections: "General Land-Use Plan," "Redevelopment Plan," "Redevelopment Project," and "Estimated Redevelopment Activities and Costs."

A. General Land-Use Plan

The proposed land uses for the Redevelopment Project Area reflect the goals and objectives previously identified. Map 3 – Proposed Land Use identifies the uses that will be supported by the Plan. The land use category for the Redevelopment Project Area is commercial. The Proposed Land Use Plan is intended to guide future land use improvements and developments for the Redevelopment Project Area is commercial.

The Chicago Plan Commission must approve this Plan and the proposed land use described herein prior to its adoption by the City Council.

B. Redevelopment Plan

The proposed land use is key to the comprehensive and cohesive development of the Redevelopment Project Area as a successful complement to its surrounding community. The primary intent of this Plan is to build upon the work that has already taken place near the adjacent area. The overall strategy is to develop a viable commercial business in the currently vacant structure. Additionally, the Plan will help to eliminate existing deteriorating conditions within the Redevelopment Project Area that make the area eligible as a conservation area under the Act.

This Redevelopment Plan incorporates the use of tax increment revenues to stimulate or stabilize the Redevelopment Project Area through the planning and programming of improvements. The Redevelopment Plan's strategy is to develop a public improvement program using tax increment financing, as well as other funding sources available to the City, which will improve the Redevelopment Project Area and which will reinforce and further private investment. This public improvement program can basically be categorized as follows:

- Renovate and rehabilitate existing the commercial structure; and
- Undertake public improvements on adjacent streets, alleys and sidewalks.

To meet the goals and objectives of this Plan, the City may acquire and assemble property throughout the Redevelopment Project Area. Land assemblage by the City may be by purchase, exchange, donation, lease, eminent domain, through the Tax Reactivation Program or other programs and may be for the purpose of (a) sale, lease or conveyance to private developers, or (b) sale, lease, conveyance or dedication for the construction of public

improvements or facilities. Furthermore, the City may require written redevelopment agreements with developers before acquiring any properties. As appropriate, the City may devote acquired property to temporary uses until such property is scheduled for disposition and development.

In connection with the City exercising its power to acquire real property, including the exercise of the power of eminent domain, under the Act in implementing the Plan, the City will follow its customary procedures of having each such acquisition recommended by the Community Development Commission (or any successor commission) and authorized by the City Council of the City. Acquisition of such real property as may be authorized by the City Council does not constitute a change in the nature of this Plan.

In the event that the implementation of the Plan results in the removal of residential housing units in the Redevelopment Project Area occupied by low-income households or very low-income households, or the displacement of low-income households or very low-income households from such residential housing units, such households shall be provided affordable housing and relocation assistance not less than that which would be provided under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the regulations thereunder, including the eligibility criteria. Affordable housing may be either existing or newly constructed housing. The City shall make a good faith effort to ensure that this affordable housing is located in or near the Redevelopment Project Area.

As used in the above paragraph "low-income households", "very low-income households" and "affordable housing" shall have the meanings set forth in Section 3 of the Illinois Affordable Housing Act, 310 ILCS 65/3. As of the date of this Plan, these statutory terms are defined as follows: (i) "low-income household" means a single person, family or unrelated persons living together whose adjusted income is more than 50 percent but less than 80 percent of the median income of the area of residence, adjusted for family size, as such adjusted income and median income are determined from time to time by the United States Department of Housing and Urban Development ("HUD") for purposes of Section 8 of the United States Housing Act of 1937; (ii) "very low-income household" means a single person, family or unrelated persons living together whose adjusted income is not more than 50 percent of the median income of the area of residence, adjusted for family size, as so determined by HUD; and (iii) "affordable housing" means residential housing that, so long as the same is occupied by low-income households or very low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than 30 percent of the maximum allowable income for such households, as applicable.

The City requires that developers who receive tax increment funds for market rate housing set aside 20 percent of the units to meet affordability criteria established by the City's Department of Housing or any successor agency. Generally, this means the affordable for-sale units should be priced at a level that is affordable to persons earning no more than 100 percent of the area median income, and affordable rental units should be affordable to persons earning no more than 60 percent of the area median income.

C. Redevelopment Project

The purpose of this Plan is to create a planning and programming mechanism that guides financial investment of tax increment funds and private sources of funds for the redevelopment of properties within the Redevelopment Project Area. The Plan contains specific redevelopment objectives addressing both private actions and public improvements that will assist the overall redevelopment of the Redevelopment Project Area. The Plan will be implemented in phases and will help to eliminate those existing conditions that make the Redevelopment Project Area susceptible to blight.

The Plan for the Redevelopment Project Area incorporates the use of tax increment funds to stimulate and stabilize the Redevelopment Project Area, which will have a positive effect for the residents and property owners in the surrounding area. The Plan's underlying strategy is to use tax increment financing, as well as other funding sources, to reinforce and encourage further private investment. The City may enter into redevelopment agreements, which will generally provide for the City to grant funding for activities permitted by the Act. The funds for these improvements will come from the incremental increase in tax revenues generated from the Redevelopment Project Area, or the City's possible issuance of bonds to be repaid from the incremental taxes. A developer may be responsible for site improvements and may further be required to build any agreed-upon improvements needed for the project. Under a redevelopment agreement, the developer may also be reimbursed from incremental tax revenues (to the extent permitted by the Act) for all or a portion of eligible costs.

D. Estimated Redevelopment Project Activities and Costs

The City may enter into redevelopment agreements or intergovernmental agreements with private entities or public entities, respectively, to construct, rehabilitate, renovate, or restore private or public improvements on the parcel (collectively referred to as "Redevelopment Project"). The various redevelopment expenditures that are eligible for payment or reimbursement under the Act are reviewed below. Following this review is a list of estimated redevelopment project costs that are deemed necessary to implement this Plan ("Redevelopment Project Costs," see Table 1 – Estimated Redevelopment Project Costs).

In the event the Act is amended after the date of the approval of this Plan by the City Council of Chicago to (a) include new eligible redevelopment project costs, or (b) expand the scope or increase the amount of existing eligible redevelopment project costs (such as, for example, by increasing the amount of incurred interest costs that may be paid under 65 ILCS 5-11-74.4-3(q)(11)), this Plan shall be deemed to incorporate such additional, expanded or increased eligible costs as Redevelopment Project Costs under the Plan, to the extent permitted by the Act. In the event of such amendment(s) to the Act, the City may add any new eligible Redevelopment Project Costs as a line item in Table 1 or otherwise adjust the line item in Table 1 without amendment to this Plan, to the extent permitted by the Act. In no instance, however, shall such additions or adjustments result in any increase in the total Redevelopment Project Costs without a further amendment to this Plan.

Eligible Redevelopment Costs

Redevelopment Project Costs include the sum total of all reasonable or necessary costs incurred, estimated to be incurred, or incidental to this Plan pursuant to the Act. Such costs may include, without limitation, the following:

1. Costs of studies, surveys, development of plans and specifications, implementation and administration of the Plan, including but not limited to staff and professional service costs for architectural, engineering, legal, financial, planning, or other services (excluding lobbying expenses), provided that no charges for professional services are based on a percentage of the tax increment collected;
2. The costs of marketing sites within the Redevelopment Project Area to prospective businesses, developers, and investors;
3. Property assembly costs, including, but not limited to acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, site preparation, site improvements that serve as an engineered barrier addressing ground-level or below-ground environmental contamination, including, but not limited to parking lots and other concrete or asphalt barriers, and the clearing and grading of land;
4. Costs of rehabilitation, reconstruction or repair or remodeling of existing public or private buildings, fixtures, and leasehold improvements; and the costs of replacing an existing public building if pursuant to the implementation of a redevelopment project the existing public building is to be demolished to use the site for private investment or devoted to a different use requiring private investment;
5. Costs of the construction of public works or improvements subject to the limitations in Section 11-74.4-3(q)(4) of the Act;
6. Costs of job training and retraining projects including the cost of "welfare to work" programs implemented by businesses located within the Redevelopment Project Area as long as such projects feature a community-based training program that ensures maximum reasonable opportunities for residents of the community area with particular attention to the needs of those residents who have previously experienced inadequate employment opportunities and development of job-related skills including residents of public and other subsidized housing and people with disabilities;
7. Financing costs including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued thereunder, including interest accruing during the estimated period of construction of any redevelopment project for

- which such obligations are issued and for a period not exceeding 36 months following completion and including reasonable reserves thereto;
8. To the extent the City by written agreement accepts and approves the same, all or a portion of a taxing district's capital costs resulting from the redevelopment project necessarily incurred or to be incurred within a taxing district in furtherance of the objectives of the Plan;
 9. Relocation costs to the extent that the City determines that relocation costs shall be paid or is required to make payment of relocation costs by federal or state law or by Section 74.4-3(n)(7) of the Act;
 10. Payment in lieu of taxes, as defined in the Act;
 11. Costs of job training, retraining, advanced vocational education or career education, including, but not limited to courses in occupational, semi-technical, or technical fields leading directly to employment, incurred by one or more taxing districts, provided that such costs (1) are related to the establishment and maintenance of additional job training, advanced vocational education or career education programs for persons employed or to be employed by employers located in the Redevelopment Project Area; and (2) when incurred by a taxing district or taxing districts other than the City, are set forth in a written agreement by or among the City and the taxing district or taxing districts, which agreement describes the program to be undertaken including, but not limited to the number of employees to be trained, a description of the training and services to be provided, the number and type of positions available or to be available, itemized costs of the program and sources of funds to pay for the same, and the term of the agreement. Such costs include, specifically, the payment by community college districts of costs pursuant to Sections 3-37, 3-38, 3-40 and 3-40.1 of the Public Community College Act, 110 ILCS 805/3-37, 805/3-38, 805/3-40 and 805/3-40.1, and by school districts of costs pursuant to Sections 10-22.20a and 10-23.3a of the School Code, 105 ILCS 5/10-22.20a and 5/10-23.3a;
 12. Interest costs incurred by a redeveloper related to the construction, renovation, or rehabilitation of a redevelopment project provided that: (1) such costs are to be paid directly from the special tax allocation fund established pursuant to the Act; (2) such payments in any one year may not exceed 30 percent of the annual interest costs incurred by the redeveloper with regard to the redevelopment project during that year; (3) if there are not sufficient funds available in the special tax allocation fund to make the payment pursuant to this provision, then the amounts so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; (4) the total of such interest payments paid pursuant to the Act may not exceed 30 percent of the total (i) cost paid or incurred by the redeveloper for such redevelopment project, or (ii) redevelopment project costs excluding any property assembly costs and any relocation costs incurred by the City pursuant to the Act; and (5) up to 75 percent of the interest

cost incurred by a redeveloper for the financing of rehabilitated or new housing for low- and very low-income households, as defined in Section 3 of the Illinois Affordable Housing Act, shall be substituted for 30 percent in (2) and (4) above;

13. Unless explicitly provided in the Act, the cost of construction of new privately owned buildings shall not be an eligible redevelopment project cost;
14. An elementary, secondary, or unit school district's increased costs attributable to assisted housing units will be reimbursed as provided in the Act;
15. Instead of the eligible costs provided for in (12) 2, 4 and 5 above, the City may pay up to 50 percent of the cost of construction, renovation and/or rehabilitation of all low- and very low-income housing units (for ownership or rental) as defined in Section 3 of the Illinois Affordable Housing Act. If the units are part of a residential redevelopment project that includes units not affordable to low- and very low-income households, only the low- and very low-income units shall be eligible for benefits under the Act; and
16. The costs of day care services for children of employees from low-income families working for businesses located within the Redevelopment Project Area and all or a portion of the cost of operation of day care centers established by Redevelopment Project Area businesses to serve employees from low-income families working in businesses located in the Redevelopment Project Area. For the purposes of this paragraph, "low-income families" means families whose annual income does not exceed 80% of the City, county, or regional median income as determined from time to time by HUD.

If a special service area has been established pursuant to the Special Service Area Tax Act, 35 ILCS 235/0.01 et seq., as amended, then any tax increment revenues derived from the tax imposed pursuant to the Special Service Area Tax Act may be used within the redevelopment project area for the purposes permitted by the Special Service Area Tax Act as well as the purposes permitted by the Act.

Table 1 – Estimated Redevelopment Project Costs represents those eligible project costs pursuant to the Act. The total Redevelopment Project Costs provide an upper limit on expenditures (exclusive of capitalized interest, issuance costs, interest, and other financing costs). Within this limit, adjustments may be made in line items without amendment to this Plan. These upper limit expenditures are potential costs to be expended over the life of the Redevelopment Project Area. These funds are subject to the amount of projects and incremental tax revenues generated and the City's willingness to fund proposed projects on a project-by-project basis. The Redevelopment Project Costs represent estimated amounts and do not represent actual City commitments or expenditures.

Table 1 - Estimated Redevelopment Project Costs

	Program/Action/Improvements	Estimated Costs (\$)*
1.	Property assembly: acquisition	2,000,000
2.	Site preparation, demolition, and environmental remediation	2,000,000
3.	Public works and improvements: streets and utilities, parks and open space, public facilities (schools and other public facilities) ⁽¹⁾	2,000,000
4.	Relocation	0
5.	Rehabilitation of existing structures, fixtures and leasehold improvements, affordable housing construction and rehabilitation	12,000,000
6.	Job training, retraining, welfare-to-work	500,000
7.	Interest subsidies	900,000
8.	Professional services: studies, surveys, plans and specifications, administrative costs relating to redevelopment plan, architectural, engineering, legal, marketing, financial, planning, or other services	640,000
9.	Day care services	400,000
	Total Redevelopment Costs ⁽²⁾⁽³⁾⁽⁴⁾⁽⁵⁾	\$20,440,000

*Exclusive of capitalized interest, issuance costs, and other financing costs.

(1) This category may also include paying for or reimbursing (i) an elementary, secondary, or unit school district's increased costs attributed to assisted housing units, and (ii) capital costs of taxing districts affected by the redevelopment of the Redevelopment Project Area. As permitted by the Act, to the extent the City by written agreement accepts and approves the same, the City may pay, or reimburse all or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred within a taxing district in furtherance of the objectives of the Plan.

(2) Total Redevelopment Project Costs exclude any additional financing costs, including any interest expense, capitalized interest, and costs associated with optional redemptions. These costs are subject to prevailing market conditions and are in addition to Total Redevelopment Project Costs.

(3) The amount of the Total Redevelopment Costs that can be incurred in the Redevelopment Project Area will be reduced by the amount of redevelopment project costs incurred in contiguous redevelopment project areas, or those separated from the Redevelopment Project Area only by a public right of way, that are permitted under the Act to be paid, and are paid, from incremental property taxes generated in the Redevelopment Project Area, but will not be reduced by the amount of redevelopment project costs incurred in the Redevelopment Project Area that are paid from incremental property taxes generated in contiguous redevelopment project areas or those separated from the Redevelopment Project Area only by a public right of way.

(4) Increases in estimated Total Redevelopment Project Costs of more than five percent, after adjustment for inflation from the date of the Plan adoption, are subject to the Plan amendment procedures as provided under the Act.

Additional funding from other sources such as federal, state, county, or local grant funds may be used to supplement the City's ability to finance Redevelopment Project Costs identified above.

(5) In 2007 dollars

Changes may be made in line items (but not in total) without Amendment of the Plan.

E. Sources of Funds to Pay Redevelopment Project Costs

Funds necessary to pay for Redevelopment Project Costs and secure municipal obligations issued for such costs are to be derived primarily from incremental property taxes. Other sources of funds which may be used to pay for Redevelopment Project Costs or secure municipal obligations are land disposition proceeds, state and federal grants, investment income, private financing and other legally permissible funds the City may deem appropriate. The City may incur Redevelopment Project Costs which are paid for from funds of the City other than incremental taxes, and the City may then be reimbursed for such costs from incremental taxes. Also, the City may permit the use of guarantees, deposits and other forms of security made available by private sector developers. Additionally, the City may utilize revenues, other than State sales tax increment revenues, received under the Act from one redevelopment project area for eligible costs in another redevelopment project area that is either contiguous to, or is separated only by a public right-of-way from, the redevelopment project area from which the revenues are received.

The Redevelopment Project Area may be contiguous to or separated by only a public right-of-way from other redevelopment project areas created under the Act. The City may utilize net incremental property taxes received from the Redevelopment Project Area to pay eligible redevelopment project costs, or obligations issued to pay such costs, in other contiguous redevelopment project areas or project areas separated only by a public right-of-way, and vice versa. The amount of revenue from the Redevelopment Project Area, made available to support such contiguous redevelopment project areas, or those separated only by a public right-of-way, when added to all amounts used to pay eligible Redevelopment Project Costs within the Redevelopment Project Area, shall not at any time exceed the total Redevelopment Project Costs described in this Plan.

The Redevelopment Project Area may become contiguous to, or separated only by a public right-of-way from, redevelopment project areas created under the Industrial Jobs Recovery Law, 65 ILCS 5/11-74.6-1, et seq. If the City finds the goals, objectives and financial success of such contiguous redevelopment project areas or those separated only by a public right-of-way are interdependent with those of the Redevelopment Project Area, the City may determine that it is in the best interests of the City and in furtherance of the purposes of the Plan that net revenues from the Redevelopment Project Area be made available to support any such Redevelopment Project Areas, and vice versa. The City therefore proposes to use net incremental revenues received from the Redevelopment Project Area to pay eligible Redevelopment Project Costs (which are eligible under the Industrial Jobs Recovery Law referred to above) in any such areas, and vice versa. Such revenues may be transferred or loaned between the Redevelopment Project Area, and such areas. The amount of revenue from the Redevelopment Project Area so made available, when added to all amounts used to pay eligible Redevelopment Project Costs within the Redevelopment Project Area or other areas as described in the preceding paragraph, shall not at any time exceed the total Redevelopment Project Costs described in Table 1 of this Plan.

F. Issuance of Obligations

The City may issue obligations secured by incremental property taxes pursuant to Section 11-74.4-7 of the Act. To enhance the security of a municipal obligation, the City may pledge its full faith and credit through the issuance of general obligations bonds. Additionally, the City may provide other legally permissible credit enhancements to any obligations issued pursuant to the Act.

The Redevelopment Project shall be completed, and all obligations issued to finance Redevelopment Project Costs shall be retired, no later than December 31 of the year in which the payment to the City treasurer as provided in the Act is to be made with respect to ad valorem taxes levied in the twenty-third calendar year following the year in which the ordinance approving this Redevelopment Project Area is adopted (assuming City Council approval of the Redevelopment Project Area and Plan in 2007, by December 31, 2031). Also, the final maturity date of any such obligations issued may not be later than 20 years from their respective dates of issue. One or more series of obligations may be sold at one or more times in order to implement this Plan. Obligations may be issued on a parity or subordinated basis.

In addition to paying Redevelopment Project Costs, incremental property taxes may be used for the scheduled and/or early retirement of obligations, mandatory or optional redemptions, establishment of debt service reserves and bond sinking funds. To the extent that incremental property taxes are not needed for such purposes, and are not otherwise required, pledged, earmarked or otherwise designated for the payment of Redevelopment Project Costs, any excess incremental property taxes shall then become available for distribution annually to taxing districts having jurisdiction over the Redevelopment Project Area in the manner provided by the Act.

G. Most Recent Equalized Assessed Valuation of Properties

The purpose of identifying the most recent equalized assessed valuation ("EAV") of the Redevelopment Project Area is to provide an estimate of the initial EAV which the Cook County Clerk will certify for the purpose of annually calculating the incremental EAV and incremental property taxes of the Redevelopment Project Area. The 2005 EAV of the taxable parcel in the Redevelopment Project Area is \$7,046,913. This total EAV amount, by PIN, is listed in Exhibit 2. The EAV is subject to verification by the Cook County Clerk. After verification, the final figure shall be certified by the Cook County Clerk, and shall become the Certified Initial EAV from which all incremental property taxes in the Redevelopment Project Area will be calculated by Cook County. If more current EAV shall become available prior to the date of the adoption of the Plan by the City Council, the City may update the Plan by replacing Exhibit 2 with the most recent EAV.

H. Anticipated Equalized Assessed Valuation

The estimated EAV of real property within the Redevelopment Project Area, by the year 2012 (when it is estimated that the Redevelopment Projects, based on current information, will be constructed and fully assessed), is anticipated to be between \$25,000,000 and \$35,000,000. These estimates are based on several key assumptions including the following: (1) all currently

projected development will be constructed and occupied by 2012; (2) the market value of the anticipated developments will increase following completion of the redevelopment activities described in the Plan; (3) the most recent State Multiplier of 2.732 as applied to 2005 assessed values will remain unchanged; (4) for the duration of the Redevelopment Project Area, the tax rate for the entire area is assumed to be the same and will remain unchanged from the 2005 level; and (5) growth from reassessments of existing properties in the Redevelopment Project Area will be at a rate of 2.5% per year with a reassessment every three years. Although development in the Redevelopment Project Area could occur after 2012, it is not possible to estimate with accuracy the effect of such future development on the EAV for the Redevelopment Project Area. In addition, as described in Section M of the Plan, Phasing and Scheduling, public improvements and the expenditure of Redevelopment Project Costs may be necessary in furtherance of the Plan throughout the period that the Plan is in effect.

I. Financial Impact of the Redevelopment Project

The Act requires an assessment of any financial impact of the Redevelopment Project Area on, or any increased demand for services from, any taxing district affected by the Plan and a description of any program to address such financial impacts or increased demand. The City intends to monitor development in the Redevelopment Project Area and, with the cooperation of the other affected taxing districts, will attempt to ensure that any increased needs are addressed in connection with any particular development.

The following major taxing districts presently levy taxes on properties located within the Redevelopment Project Area: City of Chicago, Chicago Board of Education District, Chicago School Finance Authority, Chicago Park District, Chicago Community College District, Metropolitan Water Reclamation District of Greater Chicago, County of Cook, and Cook County Forest Preserve District.

The proposed Redevelopment Plan and Project involves the rehabilitation of an existing building and the construction of new development. The development will not likely cause an increased demand for capital improvements to be provided by the taxing districts. However, the increase in the amount of visitors to the area may increase the need for some capital improvement. Therefore, as discussed below, the financial burden of the Redevelopment Plan and Project on taxing districts is expected to be minimal.

In addition to the major taxing districts summarized above, the City of Chicago Library Fund has taxing jurisdiction over part or all of the Redevelopment Project Area. The City of Chicago Library Fund (formerly a separate taxing district from the City) no longer extends taxing levies, but it continues to exist for receiving delinquent taxes.

Impact of the Redevelopment Project

The renovation and construction of vacant and underutilized property in the Redevelopment Project Area should not increase the demand for services and/or capital improvements to be provided by the City of Chicago, Chicago Board of Education District, Chicago School Finance Authority, Chicago Park District, Chicago Community College District, Metropolitan Water

Reclamation District of Greater Chicago, County of Cook, and Cook County Forest Preserve District. The nature of these potential demands for services on these taxing districts is described below.

City of Chicago. The renovation and improvement of vacant and underutilized properties should not increase the demand for services and programs provided by the City, including police and fire protection, sanitary collection, recycling, etc. Appropriate City departments can adequately address any increase in demand for City services and programs. Therefore, the Redevelopment Plan is not anticipated to require expansion of City service

Chicago Board of Education. No children are expected to move in to the Redevelopment Project Area and therefore, the Redevelopment Plan will not require an increase in educational services.

Chicago Park District. The renovation of vacant and underutilized commercial property will not increase the number of residents to the Redevelopment Project Area. The City intends to monitor development with the cooperation of the Chicago Park District to ensure that any increase in the demand for services will be adequately addressed.

Chicago Community College 508. The renovation and improvement of vacant and underutilized commercial property should neither increase the need for college educational services, nor increase the number of schools provided by the Chicago Community Colleges.

Metropolitan Water Reclamation District of Greater Chicago. It is expected that any increase in demand for treatment of sanitary and storm sewage associated with the renovation and improvement of vacant and underutilized commercial property can be handled adequately by existing treatment facilities maintained and operated by the Metropolitan Water Reclamation District.

County of Cook. It is expected that any increase in demand from the renovation and improvement of vacant and underutilized property can be handled adequately by existing services and programs maintained and operated by the County of Cook.

Cook County Forest Preserve District. It is expected that any increase in demand from the renovation and improvement of vacant and underutilized commercial property can be handled adequately by existing services and programs maintained and operated by the Cook County Forest Preserve District.

J. Program to Address Financial and Service Impacts

The complete scale and amount of development in the Redevelopment Project Area cannot be predicted with complete certainty, and the demand for services provided by the affected taxing districts cannot be quantified. The City intends to monitor development in the Redevelopment

Project Area and, with the cooperation of the other affected taxing districts, will attempt to ensure that any increased needs are addressed.

As indicated in Section V, Subsection D and Table 1 of the Appendix, Estimated Redevelopment Project Costs, the City may provide public improvements and facilities to service the Redevelopment Project Area. Potential public improvements and facilities provided by the City may mitigate any additional service and capital demands placed on taxing districts as a result of the implementation of this Redevelopment Project.

K. Provision for Amending the Redevelopment Plan

The Redevelopment Plan may be amended pursuant to the provisions of the Act.

L. Fair Employment Practices, Affirmative Action Plan, and Prevailing Wage Agreement

The City is committed to and will affirmatively implement the following principles with respect to the Redevelopment Project Area and this Plan.

1. The assurance of equal opportunity in all personnel and employment actions with respect to the Redevelopment Project, including but not limited to hiring, training, transfer, promotion, discipline, fringe benefits, salary, employment working conditions, termination, etc., without regard to race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, or housing status.
2. Redevelopers must meet the City's standards for participation of 24% Minority Business Enterprises and four percent Woman Business Enterprises and the City Resident Construction Worker Employment Requirement as required in redevelopment agreements.
3. This commitment to affirmative action and nondiscrimination will ensure that all members of the protected groups are sought out to compete for all job openings and promotional opportunities.
4. Redevelopers must meet City standards for any applicable prevailing wage rate as ascertained by the Illinois Department of Labor to all project employees.

The City shall have the right in its sole discretion to exempt certain small businesses, residential property owners and developers from the above.

M. Phasing and Scheduling

A phased implementation strategy will be used to achieve a timely and orderly redevelopment of the Redevelopment Project Area. It is expected that while this Plan is in effect for the Redevelopment Project Area, numerous public/private improvements and developments can be expected to take place. The specific time frame and financial investment will be staged in a timely manner. Development within the Redevelopment Project Area will be staged consistently with the funding and construction of infrastructure improvements, and private sector interest. City expenditures for Redevelopment Project Costs will be carefully staged on a reasonable and proportional basis to coincide with expenditures in redevelopment by private developers. The Redevelopment Plan shall be completed, and all obligations issued to finance Redevelopment Project Costs shall be retired, no later than December 31st of the year in which the payment to the City Treasurer as provided in the Act is to be made with respect to ad valorem taxes levied in the 23rd calendar year following the year in which the ordinance approving this Redevelopment Project Area was adopted (assuming adoption by the City Council in 2007, by December 31, 2031).

Appendix

Exhibit 1 - Legal Description

THAT PART OF JOHN YALE'S RESUBDIVISION OF BLOCKS 38, 39, 40, 42, 43, 44, 45, 57, 58, 59, 60, 61 AND 72 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 16 IN SAID BLOCK 40; THENCE NORTH 89 DEGREES 52 MINUTES 39 SECONDS EAST ALONG THE NORTH LINE OF LOTS 16 THROUGH 30 IN SAID BLOCK 40, AND THE EASTERLY PROJECTION THEREOF, 436.57 FEET INCLUSIVE, TO THE EAST LINE OF DAYTON STREET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE, 356.18 FEET TO THE EASTERLY PROJECTION OF THE NORTH LINE OF LOT 26 IN SAID BLOCK 44; THENCE SOUTH 89 DEGREES 53 MINUTES 18 SECONDS WEST ALONG SAID EASTERLY PROJECTION AND SAID NORTH LINE AND THE WESTERLY PROJECTION OF SAID NORTH LINE AND THE NORTH LINE OF LOT 16 IN SAID BLOCK 44, A DISTANCE OF 291.30 FEET TO THE SOUTHERLY PROJECTION OF THE WEST LINE OF LOT 9 IN SAID BLOCK 44; THENCE NORTH 00 DEGREES 00 MINUTES 24 SECONDS WEST ALONG SAID SOUTHERLY PROJECTION AND ALONG SAID WEST LINE AND ALONG A LINE DRAWN BETWEEN THE NORTHWEST CORNER OF SAID LOT 9 AND THE SOUTHEAST CORNER OF LOT 21 IN SAID BLOCK 40, A DISTANCE OF 187.14 FEET TO A LINE PARALLEL WITH AND 19.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTH LINE OF LOTS 16 THROUGH 21, BOTH INCLUSIVE, IN SAID BLOCK 40; THENCE SOUTH 89 DEGREES 52 MINUTES 39 SECONDS WEST ALONG SAID PARALLEL LINE, 211.21 FEET TO THE WEST LINE OF FREEMONT STREET; THENCE NORTH 00 DEGREES 00 MINUTES 45 SECONDS WEST ALONG SAID WEST LINE, 168.99 FEET TO THE WESTERLY PROJECTION OF THE NORTH LINE OF LOT 16 IN BLOCK 40 OF SAID JOHN YALE'S RESUBDIVISION; THENCE NORTH 89 DEGREES 52 MINUTES 39 SECONDS EAST ALONG SAID WESTERLY PROJECTION, 66.00 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

Exhibit 2 - 2005 Equalized Assessed Value

PIN	2005 EAV
17-05-209-013-0000	\$7,046,913

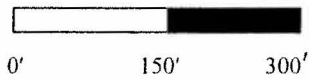
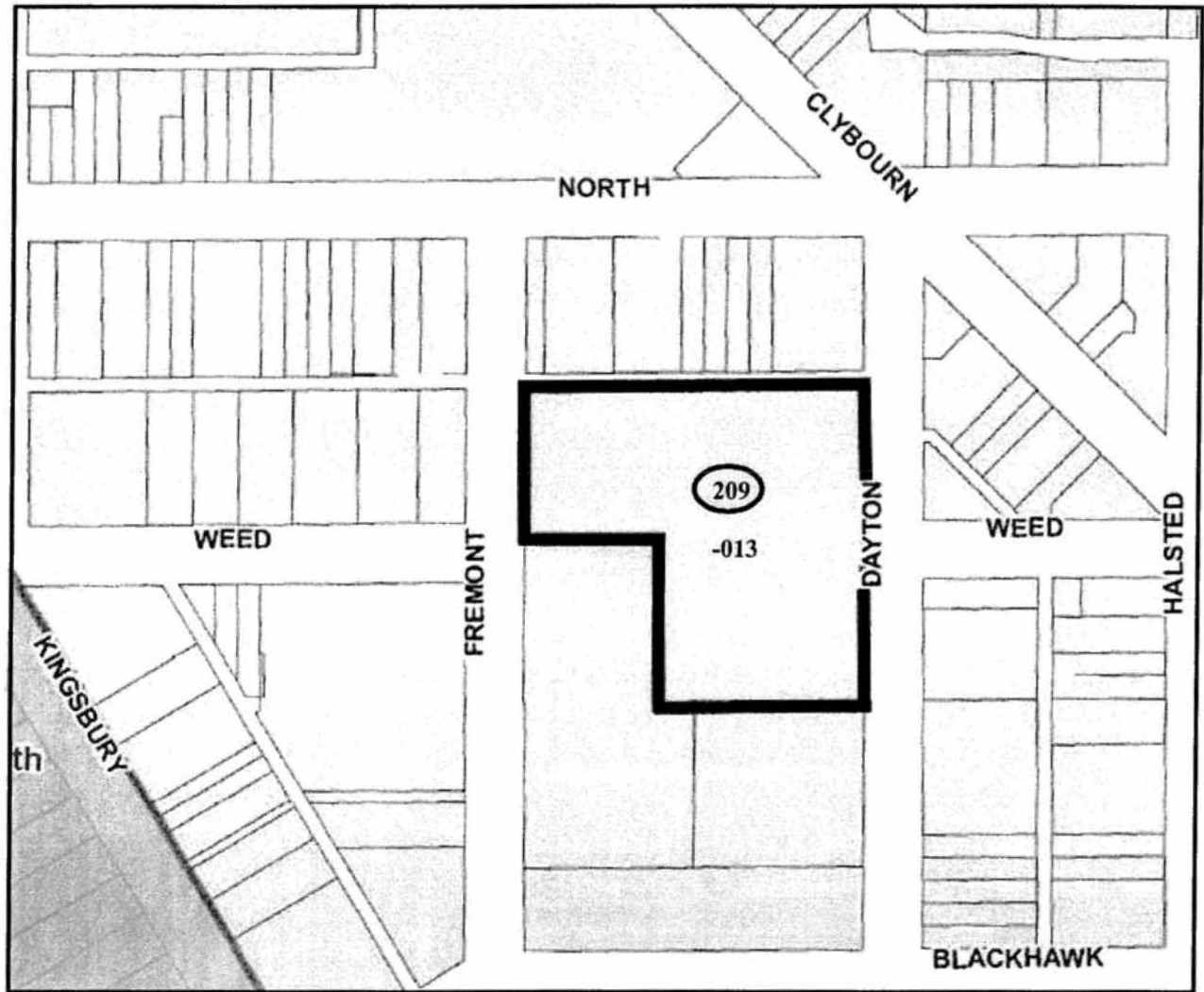
Exhibit 3 - Map Legend

Map 1 – Project Boundary

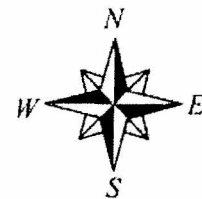
Map 2 – Existing Land Use

Map 3 – Proposed Land Use

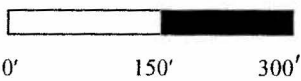
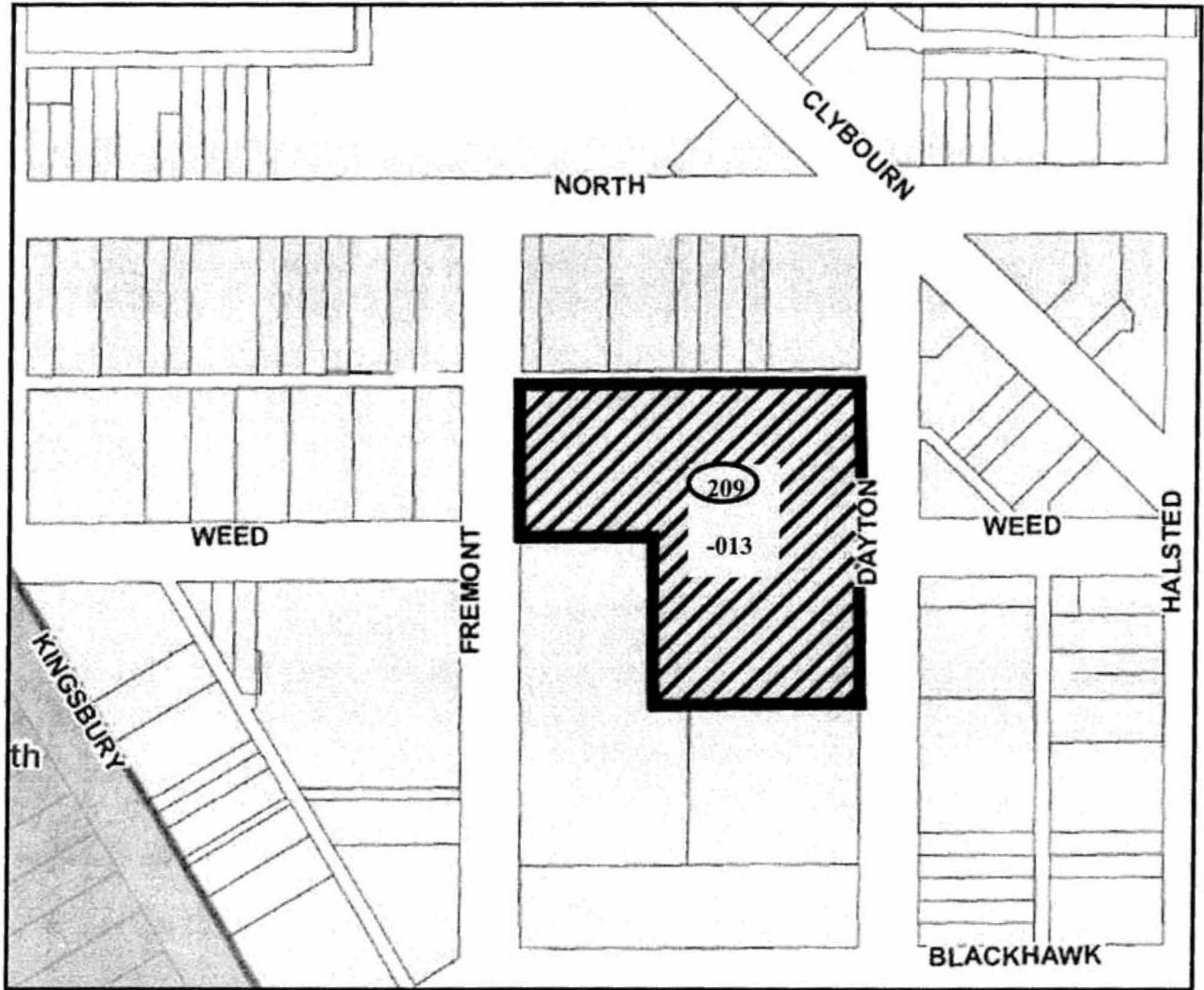
MAP 1 – BOUNDARY AREA



LEGEND
—— BOUNDARY



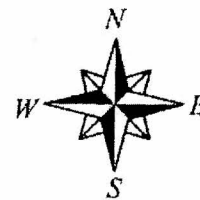
MAP 2 – EXISTING LAND USE



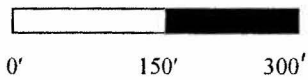
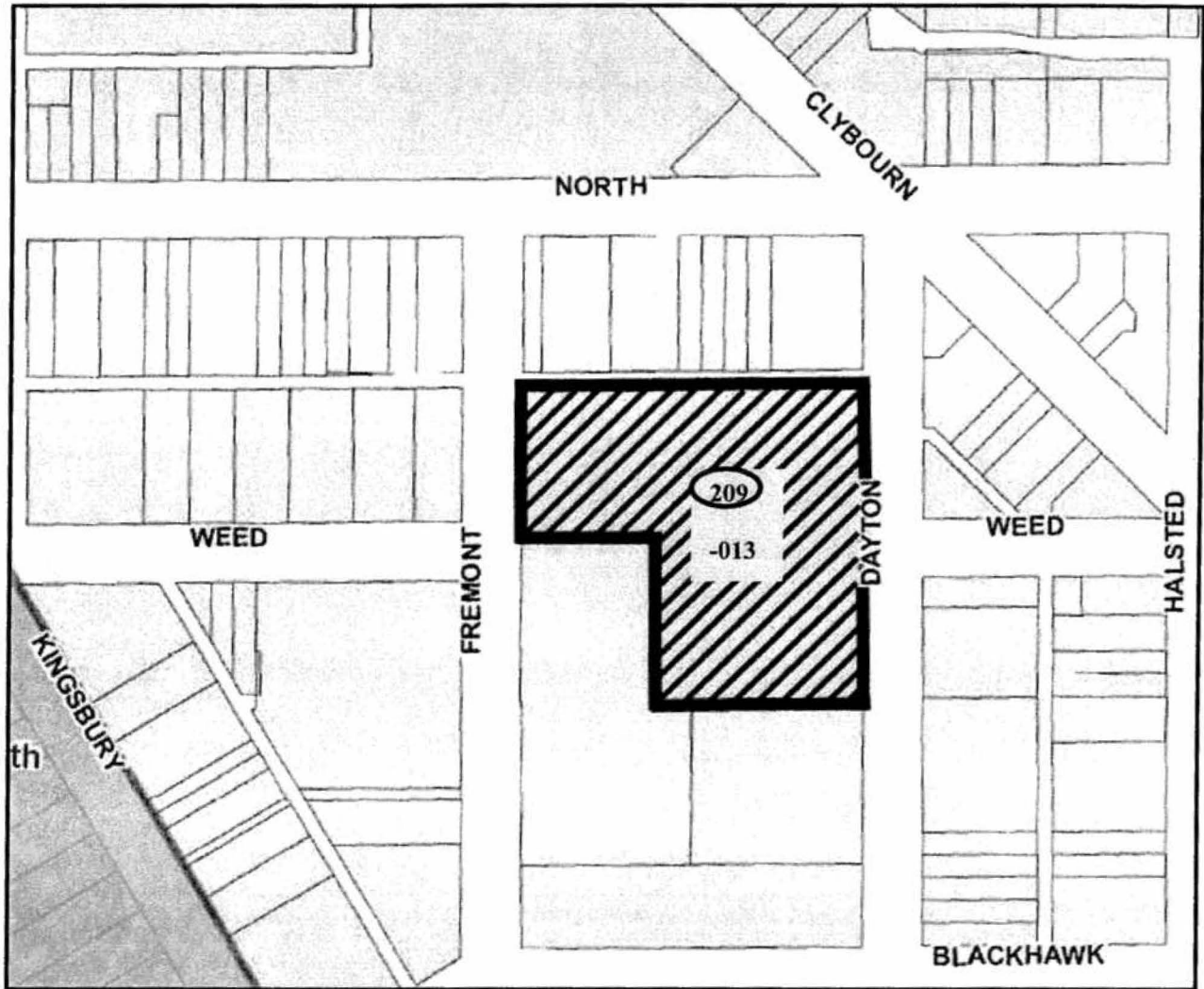
LEGEND

— BOUNDARY

 COMMERCIAL/INDUSTRIAL



MAP 3 – PROPOSED LAND USE



LEGEND

— BOUNDARY

 COMMERCIAL/INDUSTRIAL

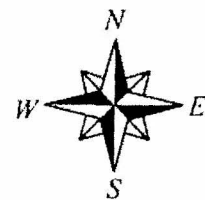


Exhibit 4 - City of Chicago Weed/Fremont Tax Increment Financing
Program Eligibility Study

CITY OF CHICAGO

WEED/FREMONT
TAX INCREMENT FINANCING PROGRAM

ELIGIBILITY STUDY

CITY OF CHICAGO
RICHARD M. DALEY
MAYOR

AUGUST 2007

THIS STUDY IS SUBJECT TO REVIEW, COMMENTS, AND REVISION

PREPARED BY
LOUIK/SCHNEIDER & ASSOCIATES, INC.

WEED/FREMONT
TAX INCREMENT FINANCING PROGRAM
ELIGIBILITY STUDY

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I. INTRODUCTION

Louik/Schneider & Associates, Inc. (the "Consultant") has conducted a study and survey of the proposed redevelopment area known as the Weed/Fremont Redevelopment Project Area (the "Redevelopment Project Area") in Chicago, Illinois. The purpose of this study is to determine whether the one parcel of the Redevelopment Project Area qualifies for designation as a "Conservation Area" for the purpose of establishing a tax increment financing district pursuant to the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended (the "Act").

This report summarizes the analyses and findings of the Consultant's work, which is the responsibility of the Consultant. The Consultant's subconsultants have provided assistance in preparing the maps, surveys, and legal description.

The Consultant has prepared this report with the understanding that the City of Chicago (the "City") would rely on: (1) the findings and conclusions of this report in proceeding with the designation of the Redevelopment Project Area as a redevelopment project area under the Act, and (2) on the fact that the Consultant has obtained the information necessary to conclude that the Redevelopment Project Area can be designated as a redevelopment project area in compliance with the Act.

Following this introduction, Section II presents background information on the Redevelopment Project Area including the area location, description of current conditions, and site history. Section III explains the Building Condition Assessment and documents the qualifications of the Redevelopment Project Area as a Conservation Area under the Act. Section IV, Summary and Conclusion, presents the findings.

The following analysis was based upon data assembled by the Consultant. The surveys, research, and analysis conducted include the following:

- Exterior surveys of the conditions and use of the Redevelopment Project Area
- Field surveys of environmental conditions covering streets, sidewalks, curbs and gutters, lighting, traffic, landscaping, fences and walls, and general property maintenance
- Comparison of current land use to the current Chicago Zoning Ordinance (the "Zoning Ordinance") and the current zoning maps
- Historical analysis of site uses and users

- Analysis of original and current platting and building size layout
- Review of previously prepared plans, studies, and data
- Evaluation of the EAVs in the Redevelopment Project Area from 1999 to 2005

This report was jointly prepared by Myron D. Louik, John P. Schneider, and Tricia Marino Ruffolo, of Louik/Schneider & Associates, Inc. and its subconsultants.



II. BACKGROUND INFORMATION

A. LOCATION

The Redevelopment Project Area is located on the north side of the City, three miles north of the City's central business district. It is bounded by the alley south of North Avenue on the north, just south of vacated West Weed Street on the south, North Fremont Street on the east and North Dayton Street on the west (see Map 1 – Project Boundary).

B. HISTORY

The only building in the Redevelopment Project Area was originally constructed in the 1960s as a manufacturing facility for J.P. Seeburg Corporation, a manufacturer of automatic games and jukeboxes. Operations occurring in association with those activities reportedly included metal plating, wood and metal coating, and other manufacturing. The building was purchased by Master Machine and Tool Co. in 1969, and then bought by the Seeburg Corp. in 1976. In 1980, the property was purchased by John M. Smyth's Homemakers from National Boulevard Bank under Trust Agreement no. 3188. In 1994, the building was occupied by John M. Smyth, Electric Avenue and Warehouse Club. At that time, the third floor parking garage was constructed with an entrance ramp located on the Dayton Street side. From 1997 until 2002, the property remained vacant. The property was occupied by Home Depot's Expo Design Center from 2003 to 2005.

C. EXISTING LAND USE

The Redevelopment Project Area comprises approximately 2.646 acres covering a portion of two combined City blocks. The Redevelopment Project Area contains one building. The building was originally constructed for industrial use and was then converted to commercial use. The current land use of the Redevelopment Project Area is commercial (see Map 2 – Existing Land Use).

D. DESCRIPTION OF CURRENT CONDITIONS

The Redevelopment Project Area is characterized by a vacant building which is in need of major revitalization. The building, constructed in the 1960's, is a four-story structure made of reinforced concrete. The building's loading docks are located on the Fremont side of the building. The third and fourth floors of the building are used for parking which is accessed via a ramp off

the Dayton Street side. The third floor has interior parking and the fourth floor has a parking deck. The building is constructed to the lot line on all sides. It shares common property lines with an alley to the north, two sides of a building to the west (with no space in between them), and an additional property to the south. The Redevelopment Project Area is bounded on the west by a vacant building formerly occupied by Schuessler Mills, Inc. a knitting mill, on the north by an alley, and on the south by a vacant lot which was formerly the site of Consolidated Royal Toiletries.

From this data, together with the other eligibility factors, it can be reasonably concluded that the Redevelopment Project Area (i) has not been subject to growth through private investment, and (ii) will not be developed without municipal leadership. Adoption of the Redevelopment Plan and Project is necessary to halt deterioration of the Redevelopment Project Area.

E. ZONING CHARACTERISTICS

Based on the 2007 Title 17 Municipal Code of Chicago, Chicago Zoning Ordinance (Index Publishing Corporation), the Redevelopment Project Area includes zoning classifications for commercial and business districts. The Redevelopment Project Area is currently zoned C3-5.

III. QUALIFICATION AS CONSERVATION AREA

A. ILLINOIS TAX INCREMENT ACT

The Act authorizes Illinois municipalities to redevelop locally designated areas through tax increment financing. In order for an area to qualify as a tax increment financing district, it must first be designated as a Blighted Area, a Conservation Area (or a combination of the two), or an Industrial Park Conservation Area.

As set forth in the Act, a “Conservation Area” is any improved area within the boundaries of a redevelopment project area located within the territorial limits of the municipality in which 50% or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area, but because of a combination of three or more of the following factors is detrimental to public safety, health, morals, or welfare and such an area may become a blighted area:

1. Dilapidation
2. Obsolescence
3. Deterioration
4. Presence of structures below minimum code standards
5. Illegal use of individual structures
6. Excessive vacancies
7. Lack of ventilation, light, or sanitary facilities
8. Inadequate utilities
9. Excessive land coverage and overcrowding of structures and community facilities
10. Deleterious land use or layout
11. Environmental clean-up
12. Lack of community planning
13. Equalized assessed values are declining or lower than the balance of the municipality.

On the basis of this approach, the Redevelopment Project Area is eligible for designation as a Conservation Area within the requirements of the Act. The following Section defines each of the

eligibility factors according to the Act and presents our findings relative to each.

B. SURVEY, ANALYSIS, AND DISTRIBUTION OF ELIGIBILITY FACTORS

The consultant team conducted a comprehensive exterior survey of the parcel in the Redevelopment Project Area and an analysis of each of the Conservation Area eligibility factors contained in the Act to determine their presence. The exterior surveys examined not only the condition and use of buildings but also included conditions of streets, sidewalks, curbs, gutters, lighting, underutilized land, landscaping, fences and walls, and general maintenance. In addition, an analysis was conducted of existing site coverage, land uses, zoning and its relationships to the surrounding area.

Analysis of the Redevelopment Project Area was conducted to identify the eligibility factors. Each of the factors is present to a varying degree. The following four levels are identified:

- **Not present** indicates that either the condition does not exist or that no evidence could be found or documented during the survey or analysis.
- **Limited extent** indicates that the condition does exist, but its distribution was found in only a small percentage of parcels and/or blocks.
- **Present to a minor extent** indicates that the condition does exist, and the condition is substantial in distribution or impact.
- **Present to a major extent** indicates that the condition does exist and is present throughout the area and is at a level sufficient to influence the Redevelopment Project Area as well as adjacent and nearby parcels of property.

C. BUILDING EVALUATION PROCEDURE

During the field survey, all building components and improvements to the subject building were examined to determine whether the building had an age of 35 years or more. Once it was established that the age criteria was present, the building was examined to determine if it was in sound condition or had minor, major, or critical defects. These examinations were completed to determine whether conditions existed to evidence the presence of dilapidation, deterioration, or depreciation of physical maintenance.

Building components and improvements examined were of two types:

PRIMARY STRUCTURAL COMPONENTS

These include the basic elements of any building component or improvements, including foundation walls, load-bearing walls and columns, roof, and roof structure.

SECONDARY COMPONENTS

These building components are generally added to the primary structural components and are necessary parts of the building and improvements, including porches and steps, windows and window units, doors and door units, facades, chimneys, and gutters and downspouts.

Each primary structural component and secondary component was evaluated separately as a basis for determining the overall condition of the building and surrounding area. This evaluation considered the relative importance of specific components and the effect that deficiencies in building components and improvements have on the remainder of the building components and improvements.

Subsequent to the building being evaluated, the building components were classified, as described in the following section.

BUILDING COMPONENT AND IMPROVEMENT CLASSIFICATIONS

Four major categories were used in classifying the structural condition of the building components and improvements. The criteria used are described below.

1. SOUND

Building components and improvements contain no defects, are adequately maintained, and require no treatment outside of normal ongoing maintenance.

2. REQUIRING MINOR REPAIR - DEPRECIATION OF PHYSICAL MAINTENANCE

Building components and improvements contain defects (loose or missing material or holes and cracks over a limited area), which often may be corrected through the course of normal maintenance. Minor defects have no real effect on either primary or secondary components and improvements, and the correction of such defects may be accomplished by the owner or occupants, such as pointing masonry joints over a limited area or replacement of less complicated building components and improvements. Minor defects are not considered in rating a building as structurally substandard.

3. REQUIRING MAJOR REPAIR — DETERIORATION

Building components and improvements contain major defects over a widespread area and would be difficult to correct through normal maintenance. Buildings and improvements in this category would require replacement or rebuilding of components and improvements by people skilled in the building trades.

4. CRITICAL — DILAPIDATED

Building components and improvements contain major defects (bowing, sagging, or settling of any or all exterior components, for example) causing the structure to be out-of-plumb or broken. Loose or missing materials and severe deterioration over a widespread area so extensive that the cost of repair would be excessive also qualify for dilapidated classifications.

D. CONSERVATION AREA ELIGIBILITY FACTORS

A finding may be made that the Redevelopment Project Area is a Conservation Area based on the fact that the one structure in the Redevelopment Project Area is 35 years of age or older, and the area exhibits the presence of three or more of the Conservation Area eligibility factors described above in Section III, Paragraph A, and that the area may become a blighted area because of these factors. Based on our survey and analyses, the Redevelopment Project Area meets the Act's requirement as a Conservation Area in that in addition to age, five of the eligibility factors were found to be present.

This section examines each of the Conservation Area eligibility factors.

AGE

Age presumes the existence of problems or limiting conditions resulting from normal and continuous use of structures over a period of years. Since building deterioration and related structural problems are a function of time, temperature and moisture, structures that are 35 years or older typically exhibit more problems than more recently constructed buildings.

CONCLUSION

Age is present in the only existing building in the Redevelopment Project Area.

1. DILAPIDATION

Dilapidation is referred to in the Act as “an advanced state of disrepair or neglect of necessary repairs to the primary structural components of buildings or improvements in such a combination that a documented building condition analysis determines that major repair is required or the defects are so serious and so extensive that the buildings must be removed.”

An exterior survey was conducted of the structure in the Redevelopment Project Area. The analysis of building dilapidation is based on the survey methodology and criteria described in the preceding section, “Building Evaluation Procedure.”

CONCLUSION

Based on exterior surveys and analyses undertaken, dilapidation is not present in the Redevelopment Project Area.

2. OBSOLESCENCE

Obsolescence is defined in the Act as “the condition or process of falling into disuse.” Obsolescent structures have become ill-suited for the original use.

Webster's New Collegiate Dictionary defines “obsolescence” as “being out of use; obsolete.” “Obsolete” is further defined as “no longer in use; disused” or “of a type or fashion no longer current.” These definitions are helpful in describing the general obsolescence of the building or site improvements in the Redevelopment Project Area. In making findings with respect to buildings and improvements, it is important to distinguish between *functional obsolescence*, which relates to the physical utility of a structure, and *economic obsolescence*, which relates to a property's ability to compete in the marketplace.

FUNCTIONAL OBSOLESCENCE

Structures historically have been built for specific uses or purposes. The design, location, height, and spatial arrangements are intended for a specific occupancy at a given time. Buildings and improvements become obsolete when they contain characteristics or deficiencies that limit their use and marketability after the original use ceases. The characteristics may include loss in value to a property resulting from poor design or layout, or the improper orientation of the building on its site, which detracts from the overall usefulness or desirability of a property.

ECONOMIC OBSOLESCENCE

Economic obsolescence is normally a result of adverse conditions that may cause some degree of market rejection and, hence, depreciation in market values. Typically, buildings classified as dilapidated and buildings that contain vacant space are characterized by problem conditions that may not be economically curable, resulting in net rental losses and/or depreciation in market value.

Site improvements, including sewer and water lines, public utility lines (gas, electric and telephone), roadways, parking areas, parking structures, sidewalks, curbs and gutters, lighting, etc., may also be obsolete in relation to contemporary development standards for such improvements. Factors of obsolescence may include inadequate utility capacities, outdated designs and the absence of any site improvements to a parcel.

Obsolescence, as a factor, should be based upon the documented presence and reasonable distribution of buildings and site improvements evidencing such obsolescence.

OBSOLETE BUILDING TYPES

Obsolete buildings contain characteristics or deficiencies that limit their long-term sound use or reuse for the purpose for which they were built. Obsolescence in such buildings is typically difficult and expensive to correct. Obsolete building types have an adverse effect on nearby and surrounding developments and detract from the physical, functional, and economic vitality of the area. These structures are characterized by conditions indicating that they are incapable of efficient or economic use according to contemporary standards.

Evidence of an obsolete building type can be found in the Redevelopment Project Area. Factors contributing to its obsolescence include the size of building, multistory configuration, loading and unloading provisions, and inadequate ingress and egress onto the public right-of-way. The building was originally designed specifically for a manufacturing use. It contains over 400,000 square feet of which approximately 200,000 square feet is usable (1st and 2nd floors) and the balance is used for parking. The 3rd floor is enclosed parking and the 4th floor is a parking deck. The building does not have the current configuration and support elements needed to adequately allow for the operation of businesses at today's standards.

OBSOLETE PLATTING

Obsolete platting includes parcels of irregular shape, narrow or small size, and parcels improperly platted within the Redevelopment Project Area block.

OBSOLETE SITE IMPROVEMENTS

Site improvements, including sewer and water lines, public utility lines (gas, electric, and telephone), roadways, parking areas, parking structures, sidewalks, curbs and gutters, lighting, etc., may also be obsolete in relation to contemporary development standards for such improvements. Factors of obsolescence include inadequate utility capacities, outdated designs of water mains and replacement of existing sewers. Evidence of obsolete site improvements exists throughout the entire Redevelopment Project Area.

In conclusion, economic and functional obsolescence can be found in the Redevelopment Project Area. Despite the building having been used for retail and warehousing use after the manufacturing uses, it has experienced long periods of vacancy throughout the past decades. It was vacant from 1997 until 2003. Most recently, the building has remained vacant for the past two years.

The building lacks the necessary retail showroom exposure on the Dayton Street side. The Dayton Street side offers the closest exposure to North Avenue. It is cost prohibitive to add windows to create street level exposure because the building's main mechanical systems including electrical, heating, and plumbing run across the first floor of the Dayton Street side of the building. Although the north side of the building is parallel to the alley south of North Avenue from Dayton to Weed Street, the building's loading docks are located on the west side of the building not in the alley. Loading and unloading is done on the Fremont side of the building.

The building's vast size and multistory configuration also contribute to both the economic and functional obsolescence. There is limited demand for a multistory 400,000 square foot building.

CONCLUSION

Obsolescence is present to a major extent in the Redevelopment Project Area.

3. DETERIORATION

Deterioration refers to any physical deficiencies or disrepair in buildings or surface improvements requiring major treatment or repair. Deterioration is defined in the Act separately for building and surface improvements. The Act defines deterioration with respect to buildings as "defects including, but not limited to, major defects in the secondary building components such as doors, windows, porches, gutters and downspouts, and fascia." The Act defines the deterioration of surface improvements as such "that the condition of roadways, alleys, curbs,

gutters, sidewalks, off-street parking, and surface storage areas evidence deterioration, including, but not limited to, surface cracking, crumbling, potholes, depressions, loose paving material, and weeds protruding through paved surfaces."

- Deterioration that is not easily correctable and cannot be repaired through the course of normal maintenance may be evident in buildings. Such buildings and improvements may be classified as requiring major or many minor repairs, depending upon the degree or extent of defects. This would include buildings with defects in the secondary building components (for example, doors, windows, porches, gutters and downspouts, fascia materials, etc.) and defects in primary building components (for example, foundations, frames, roofs, etc.).
- All buildings and surface improvements classified as dilapidated are also deteriorated.

DETERIORATION OF BUILDINGS

The analysis of building deterioration is based on the survey methodology and criteria described in the preceding section, "Building Evaluation Procedure."

The deteriorated building in the Redevelopment Project Area exhibits defects in both its primary and secondary components. For example, the primary components exhibiting defects include walls, roofs, and foundations with loose or missing materials (mortar, shingles), and holes and/or cracks in these components. The defects of secondary components include damage to windows, doors, stairs and/or porches; missing or cracked tuckpointing and/or masonry on the facade, chimneys, and surfaces; missing parapets, gutters and/or downspouts; foundation cracks or settling; and other missing structural components.

The building contains various defects in its façade. Also the building contains other factors of deterioration including loose/missing building materials, cracked/damaged facade, rusting, loose/missing gutters/downspouts, damaged and missing parapets, and boarded windows. The roof of the building has severely deteriorated and needs to be replaced. Leaks from the 4th floor parking deck have caused damage to the interior of the building on both the 2nd and 3rd floors. Additional water damage has caused deterioration of the 1st floor slab.

DETERIORATION OF PARKING AND SURFACE AREAS

Field surveys were also conducted to identify the condition of parking and surface area. These areas are characterized by uneven surfaces and overgrown vegetation protruding through the sidewalks. Deterioration was found in sections of the surface areas.

In conclusion, deterioration of the building and surface areas are evidenced by some of the following conditions: loose/missing building materials, cracked/damaged facade, rusting, loose/missing gutters/downspouts, damaged and missing parapets, and boarded windows.

CONCLUSION

Deterioration is present to a major extent in the Redevelopment Project Area.

4. PRESENCE OF STRUCTURES BELOW MINIMUM CODE STANDARDS

Structures below minimum code standards as stated in the Act include "all structures that do not meet the standards of zoning, subdivision, building, fire, and other governmental codes applicable to property, but not including housing and property maintenance codes." The principal purposes of such codes are to (1) require buildings to be constructed in such a way as to sustain safety of loads expected from the type of occupancy; (2) make buildings safe for occupancy against fire and similar hazards; and (3) establish minimum standards essential for safe and sanitary habitation.

CONCLUSION

Based on exterior surveys and analyses undertaken, structures below minimum code standards have not been identified in the Redevelopment Project Area.

5. ILLEGAL USE OF INDIVIDUAL STRUCTURES

Illegal use of individual structures is defined in the Act as "the use of structures in violation of applicable federal, State, or local laws, exclusive of those applicable to the presence of structures below minimum code standards."

CONCLUSION

Based on exterior surveys and analyses undertaken, no illegal uses of the structure or improvements have been observed in the Redevelopment Project Area.

6. EXCESSIVE VACANCIES

Excessive vacancies according to the Act is referred to as "the presence of buildings that are unoccupied or under-utilized and that represent an adverse influence on the area because of the frequency, extent, or duration of the vacancies." Excessive vacancies include improved properties that evidence no redundant effort directed toward their occupancy or underutilization.

Excessive vacancies is present in the Redevelopment Project Area. The building is 100% vacant and has been vacant for over two years. The building has a history of excessive vacancies. It was originally developed as an industrial building in 1968. The building has been vacant since 2005.

CONCLUSION

Excessive vacancies are present to a major extent in the Redevelopment Project Area.

7. LACK OF VENTILATION, LIGHT, OR SANITARY FACILITIES

The Act refers to the lack of ventilation, light, or sanitary facilities as "the absence of adequate ventilation for light or air circulation in spaces or rooms without windows, or that require the removal of dust, odor, gas, smoke, or other noxious airborne materials." Inadequate natural light and ventilation is defined as the absence or inadequacy of skylights or windows for interior spaces or rooms and improper window sizes and amounts by room area to window area ratios. Inadequate sanitary facilities are referred to in the Act as "the absence or inadequacy of garbage storage and enclosure, bathroom facilities, hot water and kitchens, and structural inadequacies preventing ingress and egress to and from all rooms and units within a building."

CONCLUSION

Based on exterior surveys and analyses undertaken, lack of ventilation, light, and/or sanitary facilities were not found in the Redevelopment Project Area.

8. INADEQUATE UTILITIES

The Act refers to inadequate utilities as the deficiencies in the underground and overhead utilities, such as storm sewers and storm drainage, sanitary sewers, water lines, and gas, telephone, and electrical services that are shown to be inadequate. The Act defines inadequate utilities as "those that are (i) of insufficient capacity to serve the uses in the redevelopment

project area, (ii) deteriorated, antiquated, obsolete, or in disrepair, or (iii) lacking within the redevelopment project area."

CONCLUSION

Based on the exterior surveys and analyses undertaken, inadequate utilities were not found in the Redevelopment Project Area.

9. EXCESSIVE LAND COVERAGE AND OVERCROWDING OF STRUCTURES AND COMMUNITY FACILITIES

Excessive land coverage and overcrowding of structures and community facilities is defined by the Act as "the over-intensive use of property and the crowding of buildings and accessory facilities onto a site." Examples of problem conditions warranting the designation of an area as exhibiting excessive land coverage are: (i) the presence of buildings either improperly situated on parcels or located on parcels of inadequate size and shape in relation to present-day standards of development for health and safety and (ii) the presence of multiple buildings on a single parcel. For there to be a finding of excessive land coverage, these parcels must exhibit one or more of the following conditions: insufficient provision for light and air within or around buildings, increased threat of spread of fire due to the close proximity of buildings, lack of adequate or proper access to a public right-of-way, lack of reasonably required off-street parking, or inadequate provision for loading and service.

Overcrowding of structures and community facilities refers to utilization of public or private buildings, facilities, or properties beyond their reasonable or legally permitted capacity. Overcrowding is frequently found in buildings and improvements originally designed for a specific use and later converted to accommodate a more intensive use of activities inadequately providing minimum floor area requirements, privacy, ingress and egress, loading and services, and capacity of building systems.

Excessive land coverage is present as a result of the building being improperly situated on the parcel. The building was constructed lot-line to lot-line with no setbacks on any of the sides. The building is located on parcels of inadequate size in relation to present day standards of development for health and safety. The building's fire exits are located on the south side of the building and exit on the adjacent property. The building has an increased threat of spread of fire due to the close proximity of the adjacent building.

CONCLUSION

Excessive land coverage is present in the Redevelopment Project Area.

10. DELETERIOUS LAND USE OR LAYOUT

According to the Act deleterious land uses or layout include the existence of incompatible land-use relationships, buildings occupied by inappropriate mixed-uses, or uses considered to be noxious, offensive, or unsuitable for the surrounding area.

Deleterious layout includes evidence of improper or obsolete platting of the land, inadequate street layout, and parcels of inadequate size or shape to meet contemporary development standards. It also includes evidence of poor layout of buildings on parcels and in relation to other buildings.

The building exhibits deleterious or layout with clear evidence of poor layout on its parcel in relation to adjacent buildings as well as inadequate size or shape to meet contemporary development standards. The complete absence of setbacks on the site causes the 4-story building to have an imposing presence on the adjacent building. Coupled with the building's lack of windows, it has limited potential for contemporary development. The expansive size of the building industrial footprint limits the potential reuse.

CONCLUSION

Deleterious layout is present in the Redevelopment Project Area.

11. ENVIRONMENTAL CLEAN-UP

As defined by the Act, a finding of Environmental Clean-up can be found if "the proposed Redevelopment Project Area has incurred Illinois Environmental Protection Agency or United States Environmental Protection Agency remediation costs for, or a study conducted by an independent consultant recognized as having expertise in environmental remediation has determined a need for, the clean-up of hazardous waste, hazardous substances, or underground storage tanks required by State or federal law, provided that the remediation costs constitute a material impediment to the development or redevelopment of the redevelopment project area."

CONCLUSION

Based on review and analysis, environmental clean-up is not present in the Redevelopment Project Area

12. LACK OF COMMUNITY PLANNING

Lack of community planning may be a factor if the proposed Redevelopment Project Area was developed prior to or without the benefit or guidance of a community plan. According to the Act, "the development occurred prior to the adoption by the municipality of a comprehensive or other community plan or that the plan was not followed at the time of the area's development." Furthermore, the Act states that this factor must be documented by evidence of adverse or incompatible land-use relationships, inadequate street layout, improper subdivision, parcels of inadequate shape and size to meet contemporary development standards, or other evidence demonstrating an absence of effective community planning.

Evidence of lack of community planning can be found throughout the Redevelopment Project Area as demonstrated through adverse or incompatible land-use relationships, inadequate street layout, and parcels of inadequate shape and size to meet contemporary development standards. The development of the Redevelopment Project Area occurred prior to the adoption by the municipality of a community plan.

CONCLUSION

Lack of community planning is present in the Redevelopment Project Area.

13. LACK OF GROWTH IN EQUALIZED ASSESSED VALUE

Lack of growth in equalized assessed value ("EAV") may be considered a factor if the EAV total of the proposed Redevelopment Project Area has declined for three of the last five calendar years prior to the year in which the Redevelopment Project Area was designated or is increasing at an annual rate that is less than the balance of the municipality for three of the last five calendar years for which information is available or is increasing at an annual rate that is less than the Consumer Price Index for All Urban Consumers published by the United States Department of Labor or successor agency for three of the last five calendar years prior to the year in which the redevelopment project area is designated.

The total EAV for the Redevelopment Project Area has not increased at an annual rate that is less than the balance of the municipality. Therefore, lack of growth in EAV is not a factor.

CONCLUSION

Based on review and analysis, lack of growth in EAV is not present in the Redevelopment Project Area.

E. CONSERVATION AREA ELIGIBILITY FACTORS SUMMARY

The Conservation Area eligibility criteria are present in varying degrees throughout the Redevelopment Project Area (see Exhibit 3 Distribution of Criteria). In addition to age, six of the 13 eligibility factors have been identified as present in the Redevelopment Project Area, including:

Major Extent

1. Obsolescence
2. Deterioration
3. Excessive vacancy
4. Excessive Land coverage
5. Deleterious Land Use or Layout

Minor Extent

1. Lack of community planning

IV. SUMMARY AND CONCLUSION

The conclusion of the Consultant is that the number, degree, and distribution of Conservation Area eligibility factors, as documented in this report, warrant the designation of the Redevelopment Project Area as a Conservation Area as set forth in the Act. Specifically:

- The building in the Redevelopment Project Area meets the statutory criteria for age; at least 35 years old.
- Of the 13 eligibility factors for a Conservation Area set forth in the Act in addition to age, six are present, five to a major extent and one to a minor extent. In addition to age, only three are necessary for designation as a Conservation Area to qualify for a TIF District.
- The Conservation Area eligibility factors that are present are reasonably distributed throughout the Redevelopment Project Area.

The eligibility findings indicate that the Redevelopment Project Area contains factors that qualify it as a Conservation Area in need of revitalization and that designation as a redevelopment project area will contribute to the long-term enhancement of the City.

The Redevelopment Project Area has not benefited from growth and development as a result of investments by private enterprise and will not be developed without action by the City. Despite significant efforts to find a tenant, the building has remained vacant for over two years. Specifically, the completely vacant and obsolete multi-story building would not be improved by private investment alone. It can be reasonably concluded that the Redevelopment Project Area (i) has not been subject to growth and development through private investment, and (ii) would not reasonably be anticipated to be developed without adoption of a redevelopment plan by the City.

The conclusions presented in this report are those of the Consultant. The local governing body should review this report and, if satisfied with the summary of findings contained herein, adopt a resolution that the Redevelopment Project Area qualifies as a Conservation Area and make this report a part of the public record.

The Redevelopment Project Area qualifies as an improved Conservation Area and is therefore eligible for Tax Increment Financing under the Act.

APPENDIX

EXHIBIT 1 – DISTRIBUTION OF CRITERIA*

EXHIBIT 2 – MAPS LEGEND

EXHIBIT 1 – DISTRIBUTION OF CRITERIA *

Parcel	Age	1	2	3	4	5	6	7	8	9	10	11	12	13
17-05-209-013	X		X	X			X			X	X		P	

Key

X	Present in the parcel to a major extent
P	Present in parcel to a minor extent
	Not Present

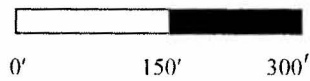
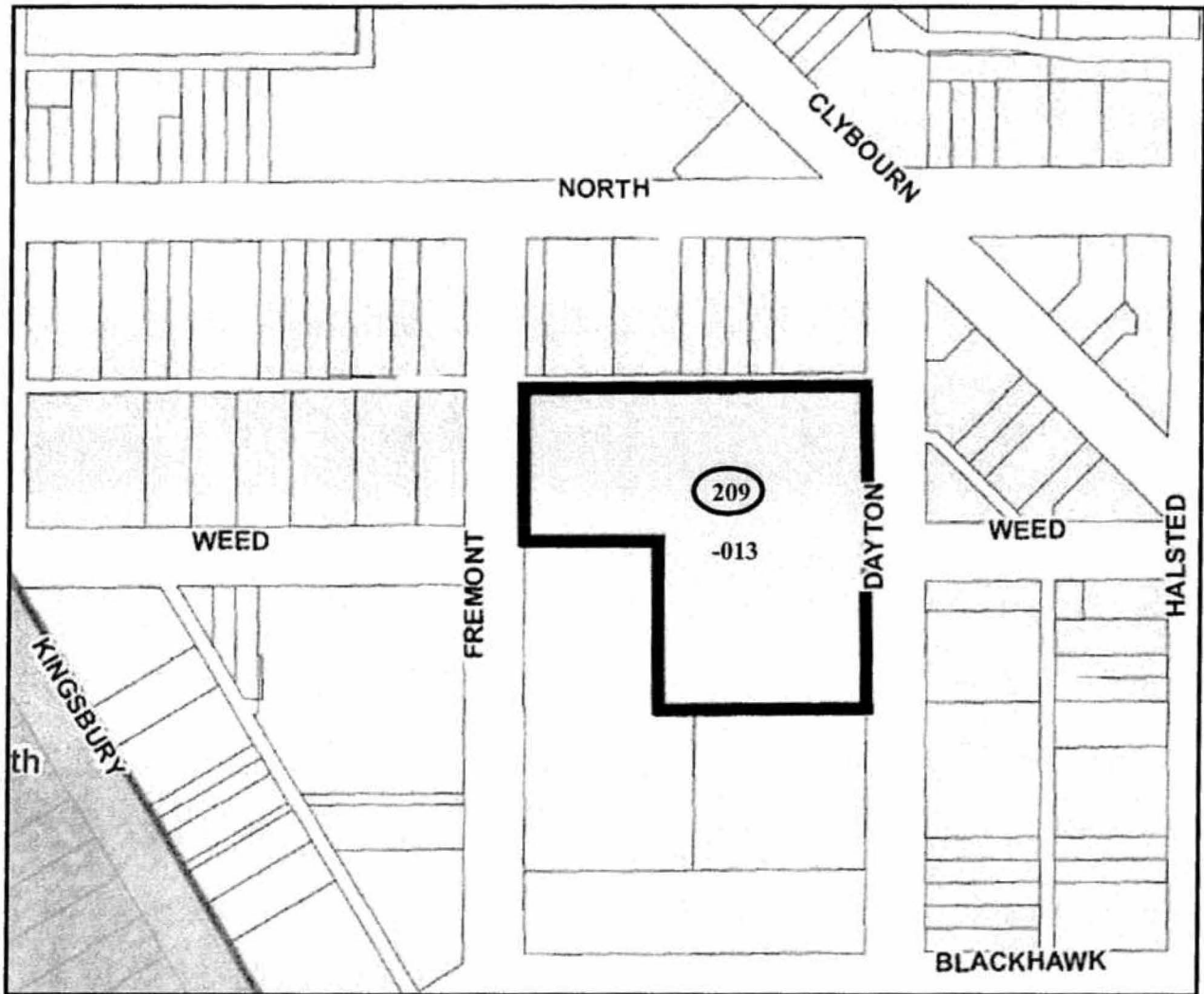
Criteria

1. Dilapidation
2. Obsolescence
3. Deterioration
4. Presence of structures below minimum code standards
5. Illegal use of individual structures
6. Excessive vacancies
7. Lack of ventilation, light, or sanitary facilities
8. Inadequate utilities
9. Excessive land coverage and overcrowding of structures and community facilities.
10. Deleterious land use or layout
11. Environmental clean-up
12. Lack of community planning
13. EAV Growth (calculated for the Redevelopment Project Area as a whole)

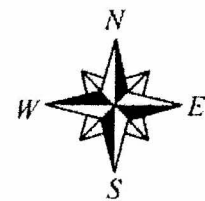
EXHIBIT 2 – MAPS LEGEND

MAP 1	PROJECT BOUNDARY
MAP 2	EXISTING LAND USE

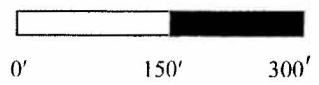
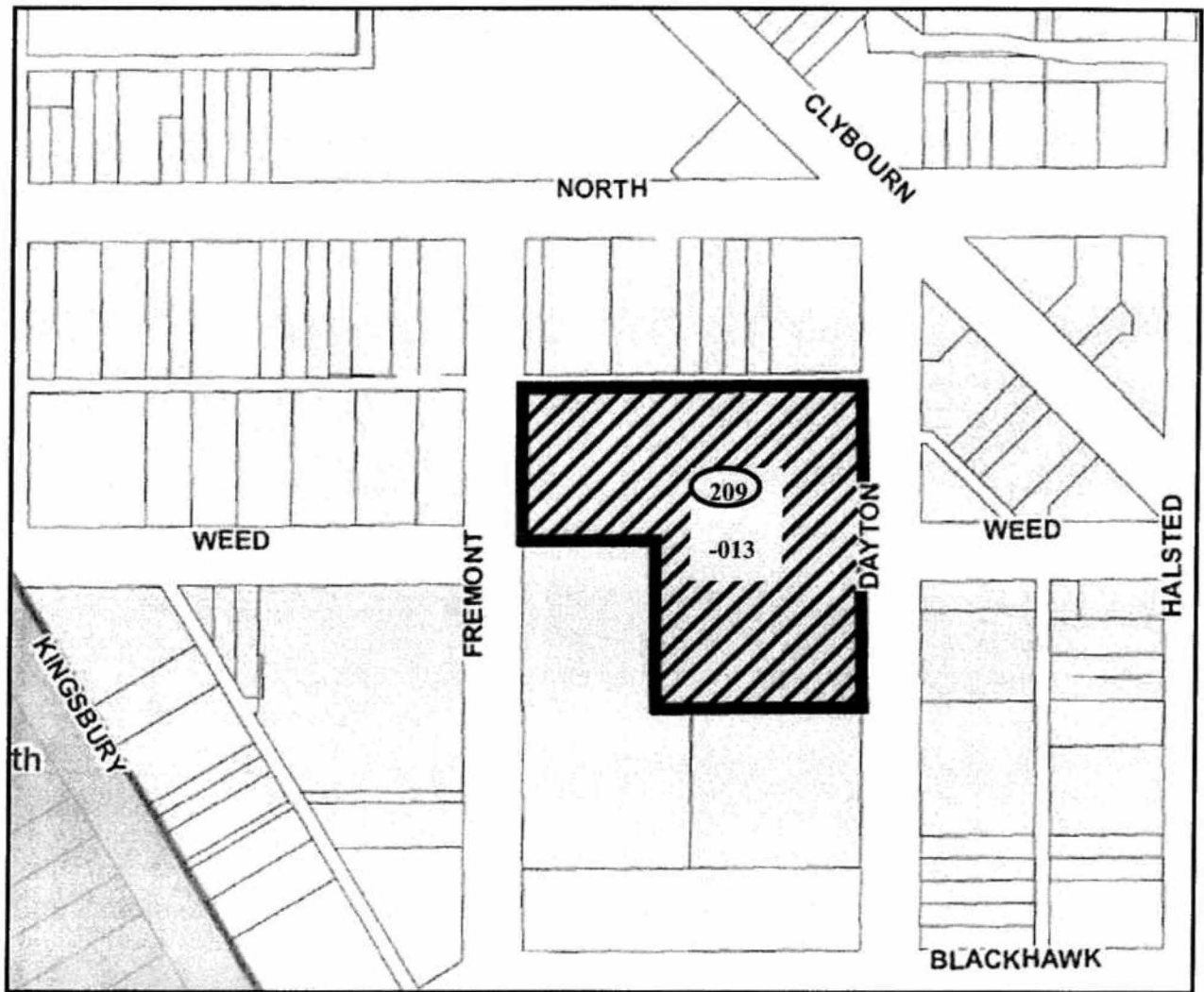
MAP 1 – BOUNDARY AREA



LEGEND
— BOUNDARY



MAP 2 – EXISTING LAND USE



- LEGEND
- BOUNDARY
 -  COMMERCIAL/INDUSTRIAL

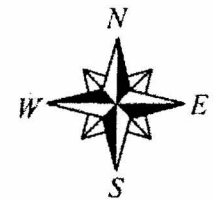


EXHIBIT E
CONSTRUCTION CONTRACT

[See attached]

AIA[®] Document A101[™] – 1997

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a STIPULATED SUM*

AGREEMENT made as of the Fourth day of August in the year of Two Thousand Eight
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

North Dayton Holdings, Inc.
c/o Grossinger Motors
151 E. Lake Cook Road
Palatine, IL 60074

and the Contractor:
(Name, address and other information)

Valenti Builders, Inc.
225 Northfield Road
Northfield, IL 60093-3311

The Project is:
(Name and location)

Grossinger City Autoplex
1500 N. Dayton
Chicago, IL 60622

The Architect is:
(Name, address and other information)

Gensler
30 W. Monroe, Suite 400
Chicago, IL 60603

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

Int.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed)

The date of commencement will be within ten (10) days of receipt of this executed contract and the necessary permits

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 365 days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work)

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be See Attachment #4 (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

§ 4.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
N/A		

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the tenth (10th) day of a month, the Owner shall make payment to the Contractor not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty-five (25) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of () Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of **ten percent (10 %)**;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

Int.

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation) (with the approval of the Owner the Contractor may reduce a subcontractor's retainage to five percent (5%) at fifty percent (50%) completion) of that subcontractor's work.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Prime Rate Plus three (3) percentage Points.

Int.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner's representative is:
(Name, address and other information)

Gary Grossinger
Grossinger Motors
1233 North Wells Street
Chicago, IL 60610
(312)707-9500

§ 7.4 The Contractor's representative is:
(Name, address and other information)

Austin V. Stanton, Jr.
Valenti Builders, Inc.
225 Northfield Road
Northfield, IL 60093
(847)446-2200

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

7.6.1 The contract sum does not include costs due to changes to the Contract Documents required by governing bodies in regards to code or the ADA Act unless specifically indicated on the Contract Documents.

7.6.2 Changes to the Work:

For additional work not included in the Contract Sum, the Contractor shall be compensated for additional work plus 8% for Contractor's Overhead and Fee. There will be no mark-up on the first \$5,000 of changes.

For parts of the work deleted from the Contract Documents or through Value Engineering by the Contractor and/or Architect, the Contractor agrees to provide this service at no additional compensation to the Contractor's Overhead and Fee. The Contractor will not provide a credit to Contractor's Overhead and Fee for deleted work.

For requests to modify the scope of work as outlined in the Contract Documents, the Architect will submit to the Contractor a written request including supplement sketches and the Contractor will submit to the Owner a Proposed Change indicating the cost and schedule adjustments. The Owner will accept or reject the Proposed Change within four (4) working days. The contractor will not execute any changes in the Contract Documents unless the Proposed Change is signed by the Owner. The signature of Gary Grossinger will represent authorization by the Owner.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

init.

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows

Document	Title	Pages
Not Applicable		

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Attachment #2
(Table deleted)

§ 8.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See Attachment #2
(Table deleted)

§ 8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
See Attachment #2		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- Attachment 1: General Contractor's Qualifications
- Attachment 2: List of Drawings & Specifications
- Attachment 3: Document A201, 1997 General Conditions of the Contract for Construction
- Attachment 4: Contract Sum
- Attachment 5: General Conditions Items (for clarification)
- Attachment 6: General Contractors' Certificate of Insurance
- Attachment 7: Contract Rider
- Attachment 8: Provisions of the Redevelopment Agreement

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

Gary Grossinger

(Printed name and title)

CONTRACTOR (Signature)

Austin V. Stanton, Jr., Vice President

(Printed name and title)

Init.

Additions and Deletions Report for AIA[®] Document A101[™] – 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:39:08 on 07/29/2008.

PAGE 1

AGREEMENT made as of the Fourth day of August in the year of Two Thousand Eight

...

North Dayton Holdings, Inc.
c/o Grossinger Motors
151 E. Lake Cook Road
Palatine, IL 60074

...

Valenti Builders, Inc.
225 Northfield Road
Northfield, IL 60093-3311

...

Grossinger City Autoplex
1500 N. Dayton
Chicago, IL 60622

...

Gensler
30 W. Monroe, Suite 400
Chicago, IL 60603

PAGE 2

The date of commencement will be within ten (10) days of receipt of this executed contract and the necessary permits.

...

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 365 days from the date of commencement, or as follows:

...

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be See Attachment #4 (\$), subject to additions and deductions as provided in the Contract Documents

PAGE 3

N/A

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the enth (10th) day of a month, the Owner shall make payment to the Contractor not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—)twenty-five (25)~~ days after the Architect receives the Application for Payment.

...

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);

PAGE 4

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6 1 and 5.1.6 2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such ~~reduction or limitation~~limitation (with the approval of the Owner the Contractor may reduce a subcontractor's retainage to five percent (5%) at fifty percent (50%) completion) of that subcontractor's work.

...

~~(—)Prime Rate Plus three (3) percentage Points.~~

PAGE 5

Gary Grossinger
Grossinger Motors
1233 North Wells Street
Chicago, IL 60610
(312)707-9500

...

Austin V. Stanton, Jr.
Valenti Builders, Inc.
225 Northfield Road
Northfield, IL 60093
(847)446-2200

...

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For requests to modify the scope of work as outlined in the Contract Documents, the Architect will submit to the Contractor a written request including supplement sketches and the Contractor will submit to the Owner a Proposed Change indicating the cost and schedule adjustments. The Owner will accept or reject the Proposed Change within four (4) working days. The contractor will not execute any changes in the Contract Documents unless the Proposed Change is signed by the Owner. The signature of Gary Grossinger will represent authorization by the Owner.

PAGE 6

Not Applicable

See Attachment #2
Section

Title

Pages

See Attachment #2
Number

Title

Date

See Attachment #2

Attachment 1: General Contractor's Qualifications

Attachment 2: List of Drawings & Specifications

Attachment 3: Document A201, 1997 General Conditions of the Contract for Construction

Attachment 4: Contract Sum


Attachment 5: General Conditions Items (for clarification)

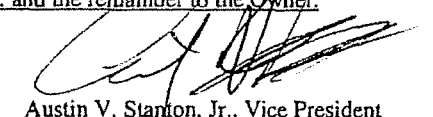
Attachment 6: General Contractors' Certificate of Insurance

Attachment 7: Contract Rider

Attachment 8: Provisions of the Redevelopment Agreement

This Agreement is entered into as of the day and year first written above.
above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.


Gary Grossinger


Austin V. Stanton, Jr., Vice President

8/4/08

ATTACHMENT 1
QUALIFICATIONS & CLARIFICATIONS

Grossinger City Autoplex
1500 N. Dayton Street
Chicago, IL 60622

1. The removal, disposal, or replacement of unsuitable soil or underground obstructions is excluded.
2. The removal or disposal of any hazardous materials, including, but not limited to, lead or lead paint, asbestos, PCB's, or any items containing mercury is excluded.
3. The removal, protection, storage, or relocation of any fixtures, furniture, machinery, files, and equipment is excluded.
4. Permit costs or permit expediting costs are excluded.
5. Premium time is excluded.
6. This Contract excludes the services of a material testing lab.
7. All utility fees, including, but not limited to gas, power, water, sewer, and phone are excluded.
8. Costs due to changes to drawings and specifications requested by governing bodies or the ADA, i.e. additional exit signs, hardware changes, etc. are excluded.
9. Any security personnel costs are excluded.
10. This Contract assumes that the CAD files for plan and reflected ceiling backgrounds will be provided to us at no additional charge, to be used for preparation of MEP shop drawings.
11. Pest control costs are excluded.
12. This Contract includes final construction cleaning. It does not include detailed cleaning of owner items.

13. Any structural supports or members not shown on the structural drawings are excluded.
14. Security systems or fire alarm systems are excluded.
15. Builders Risk Insurance and its deductible are excluded.
16. A Performance Bond is excluded.
17. Temporary electrical consumption costs are excluded.
18. This contract includes the following allowances:

Cut/Patch MEP	\$70,000.00
Concrete Sawcutting	\$70,000.00
Spoil Removal	\$40,000.00
Traffic Gates	\$20,000.00
Site Furnishings	\$20,000.00
Structural Infills	\$50,000.00
Wire Mesh Partitions	\$10,000.00
White Laquer Panels	\$0.00
Drapery @ Overhead Door	\$0.00
Patch Fireproofing	\$15,000.00
Caulking	\$10,000.00
Floor Prep	\$50,000.00
Special Floor Coatings	\$80,000.00
Clean and Paint Parking Area Ceilings	\$220,000.00
Louvers and Vents	\$25,000.00
Flag Pole	\$0.00
Signage and Graphics	\$25,000.00
Operable Partition	\$0.00
Audio Visual	\$0.00
Appliances	\$5,000.00
Bird Barrier	\$5,000.00
Mezzanine Structure	\$0.00
Knox Box	\$1,000.00
Window Blinds and Shades	\$0.00
Service Existing Escalators	\$50,000.00
Service Existing Elevators	\$50,000.00
Security System	\$75,000.00
Communications System	\$30,000.00
Traffic Topping & Structural Restoration	\$2,000,000.00

19. Liquidated damages, penalties, or premiums associated with MBE/WBE participation, City of Chicago Residency Requirements, or LEED Certification are excluded.
20. Commissioning, air monitoring or testing, and ventilation system flush-out is excluded.
21. Furniture and equipment is excluded.
22. General Conditions, Overhead, and Fee is established at a lump sum of \$1,000,000 and is based on a project duration of twelve (12) months from the date of commencement. If the project extends beyond the twelve (12) month duration through no fault of the contractor, the General Conditions will be increased by \$20,000 for the first month and \$29,000 for each month thereafter.

8/4/08

**ATTACHMENT 2
DRAWINGS & SPECIFICATIONS**

Grossinger City Autoplex
1500 N Dayton Street
Chicago, IL 60622

Drawings prepared by Gensler and their Consultants

SHEET	DESCRIPTION	DATE
	ARCHITECTURAL	
COVER	COVER	9/14/07
A00.00	INDEX, SITE LOCATION, & CODE MATRIX	11/9/07
A00.01	EGRESS PLANS	11/7/07
A00.10	ABBREVIATIONS, SYMBOLS, & GENERAL NOTES	9/14/07
A00.20	TYPICAL MOUNTING HEIGHTS & POWER LOCATIONS	9/14/07
A00.30	FINISH SCHEDULE	11/9/07
A00.31	EQUIPMENT & LIGHT FIXTURE SCHEDULE	11/9/07
A00.40	OVERALL SITE DEMOLITION PLAN	11/7/07
A00.50	OVERALL SITE PLAN	11/7/07
A01.01	OVERALL FIRST FLOOR DEMOLITION PLAN	9/14/07
A01.02	OVERALL SECOND FLOOR DEMOLITION PLAN	9/14/07
A01.03	OVERALL THIRD FLOOR DEMOLITION PLAN	9/14/07
A01.04	OVERALL ROOF LEVEL DEMOLITION PLAN	9/14/07
A01.10	OVERALL EXTERIOR DEMO ELEVATIONS - WEST & NORTH	9/14/07
A01.11	OVERALL EXTERIOR DEMO ELEVATIONS - EAST & SOUTH	9/14/07
A02.01	OVERALL FIRST FLOOR PLAN	11/5/07
A02.02	OVERALL SECOND FLOOR PLAN	11/5/07
A02.03	OVERALL THIRD FLOOR PLAN	11/5/07
A02.04	OVERALL ROOF PLAN	11/5/07
A02.05	OVERALL PENTHOUSE ROOF PLAN	11/5/07
A02.01A	FIRST FLOOR PLAN - SECTOR A	11/9/07
A02.01B	FIRST FLOOR PLAN - SECTOR B	11/9/07
A02.01C	FIRST FLOOR PLAN - SECTOR C	11/5/07
A02.01M	MEZZANINE FLOOR PLANS	11/5/07
A02.02A	SECOND FLOOR PLAN - SECTOR A	11/5/07
A02.02B	SECOND FLOOR PLAN - SECTOR B	11/9/07
A02.02C	SECOND FLOOR PLAN - SECTOR C	11/7/07
A02.03A	THIRD FLOOR PLAN - SECTOR A	11/5/07
A02.03B	THIRD FLOOR PLAN - SECTOR B	11/5/07
A02.03C	THIRD FLOOR PLAN - SECTOR C	11/5/07
A02.04A	ROOF LEVEL PLAN - SECTOR A	11/5/07
A02.04B	ROOF LEVEL PLAN - SECTOR B	11/5/07
A02.04C	ROOF LEVEL PLAN - SECTOR C	11/5/07
A03.01A	FIRST FLOOR POWER & COMMUNICATION PLAN - SECTOR A	9/14/07

A03 01B	FIRST FLOOR POWER & COMMUNICATION PLAN - SECTOR B	9/14/07
A03 01C	FIRST FLOOR POWER & COMMUNICATION PLAN - SECTOR C	9/14/07
A03.01M	MEZZANINE LEVEL POWER & COMMUNICATION PLANS	9/14/07
A03 02A	SECOND FLOOR POWER & COMMUNICATION PLAN - SECTOR A	9/14/07
A03 02B	SECOND FLOOR POWER & COMMUNICATION PLAN - SECTOR B	9/14/07
A03 02C	SECOND FLOOR POWER & COMMUNICATION PLAN - SECTOR C	9/14/07
A04.01A	FIRST FLOOR REFLECTED CEILING PLAN - SECTOR A	9/14/07
A04.01B	FIRST FLOOR REFLECTED CEILING PLAN - SECTOR B	9/14/07
A04.01C	FIRST FLOOR REFLECTED CEILING PLAN - SECTOR C	9/14/07
A04.01M	MEZZANINE LEVEL REFLECTED CEILING PLANS	9/14/07
A04.02A	SECOND FLOOR REFLECTED CEILING PLAN - SECTOR A	9/14/07
A04.02B	SECOND FLOOR REFLECTED CEILING PLAN - SECTOR B	9/14/07
A04.02C	SECOND FLOOR REFLECTED CEILING PLAN - SECTOR C	9/14/07
A04.03A	THIRD FLOOR REFLECTED CEILING PLAN - SECTOR A	9/14/07
A04.03B	THIRD FLOOR REFLECTED CEILING PLAN - SECTOR B	9/14/07
A04.03C	THIRD FLOOR REFLECTED CEILING PLAN - SECTOR C	9/14/07
A05.01A	FIRST FLOOR FINISH PLAN - SECTOR A	9/14/07
A05.01B	FIRST FLOOR FINISH PLAN - SECTOR B	9/14/07
A05.01C	FIRST FLOOR FINISH PLAN - SECTOR C	9/14/07
A05.01M	MEZZANINE LEVEL FINISH PLANS	9/14/07
A05.02A	SECOND FLOOR FINISH PLAN - SECTOR A	9/14/07
A05.02B	SECOND FLOOR FINISH PLAN - SECTOR B	9/14/07
A05.02C	SECOND FLOOR FINISH PLAN - SECTOR C	9/14/07
A06 01A	FIRST FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR A	9/14/07
A06 01B	FIRST FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR B	9/14/07
A06 01C	FIRST FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR C	9/14/07
A06.01M	MEZZANINE LEVEL FURNITURE & EQUIPMENT PLANS	9/14/07
A06 02A	SECOND FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR A	9/14/07
A06 02B	SECOND FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR B	9/14/07
A06 02C	SECOND FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR C	9/14/07
A06 03A	THIRD FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR A	9/14/07
A06 03B	THIRD FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR B	9/14/07
A06 03C	THIRD FLOOR FURNITURE & EQUIPMENT PLAN - SECTOR C	9/14/07
A06.04A	ROOF LEVEL EQUIPMENT PLAN - SECTOR A	9/14/07

A08.00	ENLARGED PLANS	9/14/07
A08.01	ENLARGED PLANS	11/9/07
A09.00	EXTERIOR ELEVATIONS - WEST & NORTH	9/14/07
A09.01	EXTERIOR ELEVATIONS - EAST & SOUTH	11/9/07
A09.20	WHOLE BUILDING SECTIONS	9/14/07
A09.30	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.31	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.32	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.33	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.34	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.35	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.36	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.37	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.38	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.39	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.40	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.41	ENLARGED ELEVATION/PLAN/SECTION	9/14/07
A09.42	WALL SECTIONS	9/14/07
A09.43	ENLARGED ELEVATION/SECTION	9/14/07
A09.44	ENLARGED ELEVATION/SECTION	9/14/07
A09.45	ENLARGED ELEVATION/SECTION	9/14/07
A10.00	VERTICAL CIRCULATION DETAILS	9/14/07
A11.00	INTERIOR ELEVATIONS	9/14/07
A11.01	INTERIOR ELEVATIONS	9/14/07
A11.02	INTERIOR ELEVATIONS	9/14/07
A11.03	INTERIOR ELEVATIONS	9/14/07
A11.04	INTERIOR ELEVATIONS	9/14/07
A11.05	INTERIOR ELEVATIONS	9/14/07
A11.06	INTERIOR ELEVATIONS	9/14/07
A11.07	INTERIOR ELEVATIONS	9/14/07
A11.08	INTERIOR ELEVATIONS	9/14/07
A11.09	INTERIOR ELEVATIONS	9/14/07
A11.10	INTERIOR ELEVATIONS	9/14/07
A11.11	INTERIOR ELEVATIONS	9/14/07
A12.00	PARTITION TYPES	11/9/07
A12.01	DOOR SCHEDULE	9/14/07
A12.02	DOOR & WINDOW DETAILS	9/14/07
A12.03	DOOR & WINDOW DETAILS	9/14/07
A12.04	DOOR & WINDOW DETAILS	9/14/07
A12.10	EXTERIOR WALL DETAILS	9/14/07
A12.11	EXTERIOR WALL DETAILS	9/14/07
A12.12	EXTERIOR WALL DETAILS	9/14/07
A12.13	EXTERIOR WALL DETAILS	11/9/07
A12.14	SECTION DETAILS	9/14/07
A12.15	SECTION DETAILS	9/14/07
A12.20	DOOR AND WINDOW DETAILS	9/14/07
A12.40	CEILING DETAILS	11/9/07
A12.50	MILLWORK DETAILS	9/14/07
A12.51	MILLWORK DETAILS	9/14/07
A12.60	FLOORING DETAILS	9/14/07

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Project Manual Volume 1 of 1 dated 9/14/07

Addendum #1 dated 11/5/07
Addendum #2 dated 11/7/07
Addendum #3 dated 11/9/07
Addendum #4 dated 12/18/07

 **AIA**® Document A201™ – 1997

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address):
Grossinger City Autoplex
1500 N. Dayton
Chicago, IL 60622

THE OWNER:
(Name and address):
North Dayton Holdings, Inc.
c/o Grossinger Motors
151 E. Lake Cook Road
Palatine, IL 60074

THE ARCHITECT:
(Name and address):
Gensler
30 W. Monroe, Suite 400
Chicago, IL 60603

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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements)

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. **Owner represents and warrants that the obligations and duties of the Architect hereinafter set forth are substantially incorporated in the contract between the Owner and Architect ("Architect Agreement"), and the Owner shall enforce the Architect's obligations under the Architect Agreement to the extent they affect the Contractor or the Architect's performance is required under the Contract.**

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects

§ 1.4 INTERPRETATION

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. **As between the Owner and Contractor, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, as between the Owner and Contractor, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.**

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

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§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and by the Contractor may be returned by the Architect without action.

§ 3.12.6 By **reviewing** and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field

construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and

about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located, **subject in all events to the Contractor's safety rules then in place.**

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. **To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, any parent, subsidiary or affiliates of the Contractor and any other person or entity designated by the Contractor as it relates to the Project, and the officers, directors, agents and employees of each of them, (collectively, the "indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and expenses provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself) including loss or use resulting therefrom, but only to the extent caused in whole or in part by it or anyone for whose acts it may be liable. To the extent permissible by Applicable Law, Contractor waives any limits on Contractor's liability to Owner that it would otherwise have by virtue of the Worker's Compensation Act or any other related law or judicial decision [such as Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)]**

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract.

Documents The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially

different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4

§ 4.3.5 Claims for Additional Cost If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed

after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

§ 4.4.6 When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

§ 4.5 MEDIATION

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

§ 4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

§ 4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing

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stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which **either (i) the Owner accepts by notifying the Subcontractor and Contractor in writing; or (ii) the subcontractor has performed work or supplied goods, which goods have or work has been accepted by the Architect, as evidenced by one or more Certificates for Payment; and**
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those

portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage **negligently or wrongfully** caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

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§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work based on the information, material and other data supplied to Contractor by the Owner as of the date hereof. Contract time may require adjustment to meet requirements of Owner's additional auto manufacturer if such auto manufacturer is not selected within 60 days of the date of this contract.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines

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is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

10.5.1 The Contractor acknowledges receipt of the Phase II Limited Subsurface Soil Investigation report dated February 21, 2008 prepared by Environmental Group Services Ltd.

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and

- 8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3 18

§ 11.1.2 The insurance required by Section 11 1 1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.2.1 The Owner and Owner's lender shall be listed as additional insureds under each policy required or otherwise maintained in connection with the Work, provided that the name of the Owner's lender is provided to Contractor in a timely manner. Owner's architect and architect's consultants and local municipality and other additional insureds as requested by Owner in writing will also be listed as additional insureds.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11 1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9 10 2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.1.4 Notwithstanding anything herein contained to the contrary, Owner acknowledges that one or more of the insurance policies carried by the Contractor for Commercial Liability Coverage and Products/Completed Operations Liability ("Policies") contains specific exclusions and one or more of said Policies do not apply to bodily injury or property damage (i) included in the products-completed operations hazard arising out of that portion of Work, if any, that includes synthetic stucco or "EIFS"; (ii) or any expense arising from Pollution, as defined in the Policies; and (iii) or personal injury or advertising injury arising from fungus(i) or spores, as defined in the Policies, or any substance, vapor or gas produced or arising out of any fungus(i) or spores. Therefore, to the extent of the exclusion, Owner shall not seek to enforce any right or remedy otherwise available to the owner against Contractor for any of the Work so excluded from such coverage. Notwithstanding the foregoing, coverage does apply under separate policy and to the extent of the coverage, Owner shall seek to enforce any right or remedy only to the limit of such coverage; provided, however, that coverage is available under a separate policy maintained by Contractor.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

(Paragraphs deleted)

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are

beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision

that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents,

correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located

§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional

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days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed

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B/4/2008

GROSSINGER CITY AUTOPLEX
 1500 NORTH DAYTON
 CHICAGO, ILL 60622
 ATTACHMENT 4
 CONTRACT SUM

TRADE/ITEM	COST
ADDITIONAL GENERAL CONDITIONS	
Overtime	\$ -
Architectural Review Fees	\$ -
Construction Permit	\$ -
OCP Policy	\$ -
Builders Risk Insurance Policy	\$ -
Payment and Performance Bond	\$ -
Dewatering	\$ -
Testing	\$ -
Security Personnel	\$ -
Utility Fees/Disconnection/Rerouting	\$ -
Winter Conditions	\$ -
Professional Services for TIF Funding	\$ 110,000.00
	\$ -
Demolition	\$ 371,250.00
Excavation / Fill	\$ 40,000.00
Fences & Gates	\$ -
Asphalt Paving/Striping	\$ -
Landscaping	\$ 203,000.00
Concrete	\$ 211,000.00
Precast Concrete	\$ -
Masonry	\$ 750,300.00
Structural Steel	\$ 438,915.00
Misc Steel	\$ 170,228.00
Rough Carpentry	\$ 192,000.00
Architectural Millwork	\$ 225,410.00
Caulking & Sealing	\$ -
Roofing / Sheet Metal	\$ 187,740.00
Metal Panels	\$ 463,708.00
Concrete Topping/Repair/Traffic Coating	\$ 2,000,000.00
Furnish Stone Panels	\$ 340,743.00
Install Stone Panels	\$ 166,875.00
Metal Doors, Frames, Hardware	\$ 133,740.00
Wood Doors	\$ 45,925.00
Aluminum Doors and Frames	\$ 59,630.00
Overhead Doors	\$ 166,895.00
Glass & Aluminum	\$ 693,255.00
Drywall/Framing	\$ 1,000,000.00
EIFS/Fiberglass Cornice	In Drywall
Acoustical Ceiling / Wood Ceiling	\$ 282,100.00
Ceramic Tile / Quarry Tile	\$ 790,360.00
Wood Flooring	\$ -
Athletic Flooring	\$ 23,560.00
Resilient Flooring and Base	\$ 143,224.00
Carpet	In Resilient
Painting & Wallcovering	\$ 502,800.00
Toilet Partitions & Accessories	\$ 17,618.00
Athletic Equipment	\$ -
Entrance Mats	\$ -
Passenger Elevators	\$ 132,000.00
Fire Protection	\$ 901,900.00
Plumbing	\$ 364,575.00
HVAC	\$ 1,890,000.00
Electrical	\$ 2,368,687.00
Toyota Entry Portal	\$ 91,600.00

Misc. Demolition	\$	-
Touch-up Painting	\$	-
Patch Roofing	\$	-
Patch Drywall	\$	-
Cut/Patch MEP	\$	70,000.00
Concrete Sawcutting	\$	70,000.00
Site / Tree Clearing	\$	-
Tree Protection	\$	-
Spoil Removal	\$	40,000.00
Traffic Gates	\$	20,000.00
Site Utilities	\$	-
Site Furnishings	\$	20,000.00
Tree Grates	\$	-
Irrigation System	\$	-
Structural Infills	\$	50,000.00
Precast Repairs	\$	-
Glass Handrail	\$	-
Wire Mesh Partitions	\$	10,000.00
White Laquer Panels	\$	-
Drapery @ Overhead Door	\$	-
Insulation	\$	-
Waterproofing	\$	-
Patch Fireproofing	\$	15,000.00
Caulking	\$	10,000.00
Floor Prep	\$	50,000.00
Special Floor Coatings	\$	80,000.00
Clean and Paint Parking Area Ceilings	\$	220,000.00
Louvers and Vents	\$	25,000.00
Flag Pole	\$	-
Signage and Graphics	\$	25,000.00
Operable partition	\$	-
Audio Visual	\$	-
Appliances	\$	5,000.00
Bird Barrier	\$	5,000.00
Mezzanine Structure	\$	-
Knox Box	\$	1,000.00
Window Blinds and Shades	\$	-
Service Existing Escalators	\$	50,000.00
Freight Elevator Removal	\$	-
Service Existing Elevators	\$	50,000.00
Security System	\$	75,000.00
Communications System	\$	30,000.00
Green Roof	\$	-
OWNER FURNISHED		
Furniture	\$	-
Front Glass Canopy	\$	-
Lockers	\$	-
Directorates	\$	-
Monument Sign	\$	-
Pneumatic Tube System	\$	50,000.00
Owner Signage & Wall Graphics	\$	-
Service Lifts	\$	-
Car-Mon System	\$	-
Broadway Car Wash	\$	-
Air Compressors	\$	-
Oil Tanks	\$	-
Tire Rotation Machine	\$	-
Oil Lines	\$	-
Waste Oil Pump	\$	-
SUBTOTAL	\$	16,450,138.00
CONTINGENCY (3%)	\$	493,504.14
SUBTOTAL	\$	16,943,642.14
GENERAL LIABILITY INSURANCE (1%)	\$	169,436.42
SUBTOTAL	\$	17,113,078.56
GENERAL CONDITIONS AND SUPERVISION	\$	600,000.00
OVERHEAD AND FEE	\$	400,000.00
TOTAL	\$	18,113,078.56

ATTACHMENT 5

Grossinger City Autoplex General Conditions Clarification List August 4, 2008

	DESCRIPTION	TOTAL
1	Incidental Permits and Bonds	In trade costs
2	Drawing Review, Consultation, or Special Consulting	Not required
3	Project Management	Included
4	Project Supervision	Included
5	General Labor	Included
6	Protection of Site	Included
7	Protection of Building	Included
8	Barricades / Warning Lights	Included
9	Temporary Fencing	Not required
10	Temporary Ramps / Walkways / Ladders	Included
11	Small Tool Rental and Purchase	Included
12	Temporary Stone/Sand	Not required
13	Miscellaneous Cutting and Patching	In trade costs
14	Dewatering	Not required
15	Safety Provisions	Included
16	Temporary Signage	Included
17	Fire Extinguishers	Included
18	Final Cleaning	Included
19	Rubbish Boxes	Included
20	Rubbish Chutes/Containers	Included
21	Miscellaneous Crane & Hoisting	In trade costs
22	Construction Layout	Included
23	Field Office - Trailer	Use existing
24	Field Office Telephone	Included
25	Field Office Fax / DSL Line	Included
26	Sanitary Provisions	Included
27	Trucking	Included
28	Field Office FF&E and Supplies	Included
29	Auto Expense Project Manager	Included
30	Auto Expense Project Superintendent	Included
31	Reproductions	Included
32	Messenger Service	Included
33	UPS / Federal Express / U.S. Mail	Included
34	Dust Control	Included
35	Water Co. Provisions for trailer	Included
36	Progress Photos	Not required
37	Travel/Entertainment	Included
38	Mobilization	In trade costs
39	Record Documents/As-Builts/Maintenance and Warranties	In trade costs
40	Temporary Power Drop	Use existing
41	Temporary Power Usage for Building During Construction	Use existing
42	Temporary Power Usage for Field Offices	Use existing
43	Temporary Gas Service	Not required
44	Temporary Enclosure / Weather Protection	Included

ATTACHMENT 5

**Grossinger City Autoplex
General Conditions Clarification List
August 4, 2008**

	DESCRIPTION	TOTAL
45	Labor for Installing Winter Enclosures	Not required
46	Heating Equipment	Not required
47	Fuel Consumption for Heating Equipment	Not required
48	Labor for Moving Heating Equipment	Not required
49	Temporary Doors for Protection	Included
50	Tarps and Blankets	Not required
51	Snow Removal	Not required
52	Schedule Preparation and Periodic Updating	Included
53	Computer Charges	Included
54	Traffic Control	In trade costs
55	Material Lift	Not required
56	Hoist Operator for Lift	Not required
57	Material Hoist	Not required
58	Material Hoist Operator	Not required
59	Iron Work, Electrical, Masonry, etc. for Mechanical Hoist or Temporary Platform Work	Not required
60	Personnel Hoist	Not required
61	Personnel Hoist Operator	Not required
62	Iron Work for Personnel Hoist or Temporary Platform Work	Not required
63	Elevator Cab Protection	Included
64	Settlement and Lateral Movement Surveys	Not required
65	Damage Control Survey of Adjacent Properties	Not required
66	Sidewalk Protection & Barriers	In trade costs
67	Guard Service for Security Reasons	Owner budget
68	Security System at Trailer or Building	Not required
69	Shop Drawing & Submittal Manager	Included
70	Estimated Time or Money for Guaranteed or Warranted Work for the One Year Period	Included
71	Excess Facility or Tap Charges - ComEd	Owner budget
72	Legal Fees	Not required
73	Testing Fees	Not required
74	Soil Borings	Not required
75	Reconditioning HVAC Due to Temporary Usage	In trade costs
76	Filter or Motor Replacement on MEP due to Temporary Usage	In trade costs
77	Permit Fees	Owner Budget
78	Permit Expediting Fees	Owner Budget
79	Performance Bond	Not required
80	OCP Policy	Not required
81	On-site or Off-site Storage Facilities	Not required
82	Liquidated damages for Tax Increment Financing	Owner budget
83	Premiums for MBE/WBE participation	Owner budget
84	Abatement or Environmental Costs	Owner budget

ATTACHMENT 6

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

1/15/2008

PRODUCER
Aon Risk Services, Inc. of Illinois
200 East Randolph
Chicago IL 60601 USA

PHONE-(866) 283-7122 FAX-(847) 953-5390

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Valenti Builders, Inc.
225 Northfield Road
Northfield IL 60093-3311 USA

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Zurich American Ins Co	16535
INSURER B:	Illinois National Insurance Co	23817
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES SIR May Apply

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MMDDYY)	POLICY EXPIRATION DATE(MMDDYY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Per Project Aggr. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	GLO297900807	05/01/07	05/01/08	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON OWNED AUTOS	BAP 2979009-07	05/01/07	05/01/08	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	
						BODILY INJURY (Per accident)	
						PROPERTY DAMAGE (Per accident)	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	
						OTHER THAN AUTO ONLY: EA ACC	
						AGG	
B		EXCESS UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	BE6565076	05/01/07	05/01/08	EACH OCCURRENCE	\$20,000,000
						AGGREGATE	\$20,000,000
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC297900707	05/01/07	05/01/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE-EA EMPLOYEE	\$1,000,000
						E.L. DISEASE-POLICY LIMIT	\$1,000,000
		OTHER Additional Insureds: See Attached					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS

VBI Job #2717 - General Contracting
Grossinger City Autoplex, 1500 N. Dayton Street, Chicago, IL 60622

CERTIFICATE HOLDER

Grossinger City Autoplex & Their Agents
1233 North Wells Street
Chicago, IL 60610

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE *Aon Risk Services, Inc. of Illinois*

Holder Identifier :

Certificate No : 570022255242

Attachment : **VBI # 2717**

INSURED: VALENTI BUILDERS, INC.

CERTIFICATE HOLDER: Grossinger City Autoplex & Their Agents
1233 North Wells Street
Chicago, IL 60610

**PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED ON
GENERAL LIABILITY, AUTO LIABILITY AND EXCESS LIABILITY:**

<u>COMPANY</u>	<u>RELATIONSHIP</u>
North & Dayton LLC, an Illinois Limited Liability Company, successor-in-interest to Tamarlin Investment Partnership	Fee Owner
The Northwestern Mutual Life Insurance Company, a Wisconsin Corporation	Fee Lender
Home Depot U.S.A., Inc., a Delaware Corporation	Sublandlord
North Dayton Holdings, Inc., an Illinois Corporation	Subtenant
Grossinger City Autocorp, Inc., an Illinois Corporation	Sub-Subtenant
Gensler & Their Agents 30 W. Monroe Street, Suite 400 Chicago, IL 60603	Architect
Walker Parking Consultants & Their Agents 505 Davis Road Elgin, IL 60123	Structural Engineer/ Parking Consultants
Environmental Systems Design, Inc. (ESD) & Their Agents 175 W. Jackson Blvd., Suite 1400 Chicago, IL 60604	MEP Engineer
McDonough Associates, Inc. & Their Agents 130 E. Randolph St., Suite 1000 Chicago, IL 60601-6214	Civil Engineer
City of Chicago & Their Agents	City

Waiver of subrogation included on the General Liability, Auto Liability, and Workers Compensation.

8/4/08

ATTACHMENT 7

**RIDER TO AGREEMENT BETWEEN
NORTH DAYTON HOLDINGS, INC., C/O GROSSINGER MOTORS (“OWNER”) AND
VALENTI BUILDERS, INC. (“CONTRACTOR”)**

(PROJECT AT 1500 DAYTON, CHICAGO, ILLINIOS)

The provisions of this Rider (“**Rider**”) shall be incorporated into and are hereby made a part of a “**Contract**” between the Owner and Contractor, which is comprised of that certain MA Document A101-1997 (“**Form A101**”) and that certain AIA Document A201-1997 general conditions (“**Form A201**”) (the Form A101 and Form A201 as modified thereon are collectively referred to hereinafter as the “**Form**”). The Form, the Supplementary Conditions and all other riders, exhibits and addenda attached hereto collectively are referred to herein as the “**Contract**”. Capitalized terms used in this Rider, unless otherwise defined herein, shall have the meaning ascribed to them in the Form. In the event there is a conflict between the terms of the Form and this Rider, the terms of this Rider shall control. All references in the Contract to approvals by “**Architect**” shall be deemed to mean approvals by both the Architect and, in the event of Major Decisions (as defined below) the Owner, except that Contractor shall not be required to obtain approval by the Owner of technical construction submittals, shop drawings, requests for information, or requests for clarification. To the extent necessary when the approval of a matter is required from both the Owner and Architect, the approval process will be coordinated to operate during the same time period for both the Owner and the Architect.

DEFINITIONS

The following terms shall have the meanings ascribed to them below:

“**Governmental Authority(ies)**” shall mean any nation or government, any federal, state, local or other political subdivision thereto (whether incorporated or not) and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government having jurisdiction or control over the Project, the Owner, or the Contractor.

“**Major Decisions**” shall mean any decision: (i) relating to the aesthetics of the Project; (ii) to increase monetary expenditures for aspects of the Work in excess of those estimated by Contractor in the Schedule of Values; or (iii) to increase the Contract Sum.

“**Owner’s Representative**” shall mean Gary Grossinger, or such other person(s) as the Owner may designate in writing to the Contractor from time to time.

“**Requirement(s)**” shall mean all laws, rules, orders, court orders, ordinances, regulations, statutes, requirements, codes, planned area developments and executive orders, extraordinary as well as ordinary, together with all permits, approvals and authorizations issued or given pursuant to any of the foregoing and all interpretations, applications and rulings in respect of any of the foregoing, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, and of any applicable fire rating bureau, or other body exercising similar functions, and/or any covenants, restrictions and agreements of record affecting the Project from time to time, or any street, avenue or sidewalk

comprising a part of or in front thereof, or requiring removal of any encroachment, or affecting the construction, maintenance, use or occupation of the Property and/or the Project from time to time.

Notwithstanding the foregoing definition, the Contractor shall not be liable for violations of those Requirements that, customarily, are the responsibility of the Architect, except for such violations that the Contractor, in the exercise of ordinary care and diligence, should have discovered.

“**Site**” shall mean that certain real property located at 1500 N. Dayton, Chicago, Illinois.

“**Subcontractor(s)**” shall mean any person or entity with whom the Contractor, directly or indirectly, contracts to perform any part of the Work or supply any materials or supplies for the Project. In addition, the term Subcontractor shall apply to Subcontractors of any tier and suppliers and materialmen employed on or for the Project pursuant to a subcontract with a Subcontractor or sub-subcontractor.

PART I

AMENDMENTS TO FORM A101

The Owner and Contractor agree that the following provisions are hereby incorporated into Form A101 where indicated by the Article and Section number reference:

ARTICLE 1

THE CONTRACT DOCUMENTS

1.1 The words “the Rider to the Agreement, attached hereto and executed in connection herewith (the “**Rider**”),” shall be added to the first line of Article 1 after the word “Agreement”:

The following shall be added to the end of Article 1 “To the extent of any conflict or inconsistency between any of the Contract Documents discovered by the Contractor, or which should have been discovered by the Contractor in the exercise of ordinary care and diligence, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- (i) Modifications issued after execution of the Contract;
- (ii) The Rider;
- (iii) The Supplementary Conditions;
- (iv) The Form;
- (v) The Drawings and Specifications as defined in Attachment #2

(vi) The Preliminary Drawings and Specifications.

The Contractor shall ensure that all subcontracts entered into with respect to this Project shall include the general and supplementary conditions to which Agreement is subject.”

ARTICLE 2

THE WORK OF THIS CONTRACT

The words “or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents” are hereby added in the first line of Article 2 following the words “Contract Documents”.

The following new Sections are hereby added to the Contract:

2.2 GENERAL SCOPE OF CONTRACTOR’S WORK.

The Contractor shall cause the construction of the Project at the Site (“Construction Work”) in accordance with and reasonably inferable from: (i) the plans and specifications prepared by the Architect and approved by the Owner a copy of which is attached hereto as Attachment 2, as may be modified from time to time in accordance with Article 7 of Form A201 as modified by this Rider (“Plans”); and (ii) the terms of this Contract and the other Contract Documents. Furthermore, the Contractor shall meet with all necessary Governmental Authorities, from time to time, and shall use diligent and good faith efforts to achieve any concessions, inducements, modifications, improvements and incentives from such Governmental Authorities as are either necessary to construct the Project or as may be requested by Architect. The duties, services and work to be provided (or caused to be provided) by the Contractor, whether specified in this Rider or otherwise required under the terms of this Contract, including without limitation the Construction Work, shall herein be collectively referred to as the “Work”.

2.3 PERSONNEL.

The Contractor shall furnish only skilled and properly trained staff for the performance of the Work.

2.3.1 During the performance of the Work, the Contractor shall keep a competent superintendent at the Site authorized to act on behalf of the Contractor. Notice from the Owner, Owner’s Representative, or the Architect to such superintendent in connection with defective Work, instructions for performance of the Work with a copy of such notice in writing to Contractor at the address set forth on the first page, shall be considered notice of such issues to the Contractor.

ARTICLE 3

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.3 The words “promptly commence and diligently prosecute the Work and” are hereby added in the first line of Section 3.3 after the word “shall”.

ARTICLE 4

CONTRACT SUM

The words “the Unit Prices set forth above are considered complete and include: (i) all materials, equipment, labor, delivery, installation, overhead and profit; and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such Unit Prices apply” are hereby added to the end of Section 4.3.

ARTICLE 5

PROGRESS PAYMENTS

The following language is hereby added to the end of Section 5.1.1 of the Contract:

5.1.1. By the fifth (5th) day of each calendar month during the Construction Phase, the Contractor shall submit to the Owner and the Escrowee (as hereinafter defined) an itemized Application for Payment for the Owner’s approval requesting payment for Work done during the prior calendar month. The Application for Payment shall be in form and substance as reasonably required by Owner and shall indicate:

(a) All Subcontractors (including all material suppliers), with the itemized costs detailed and substantiated as the Owner may require (provided that Owner shall not require itemization of costs incurred by Subcontractors under fixed sum subcontracts);

(b) The total payment of each previous Application for Payment;

(c) The amount requested in the then instant Application for Payment, which shall be 90% of the amount that is properly allocable to the Work performed and materials furnished for and incorporated in the Work, during such month (the amount retained under each Application for Payment shall be equal to 10% of the amount requested); provided that so long as the Work is being completed in accordance with the Project Schedule, within budget and otherwise in compliance with the Contract Documents, then from and after the date the Project and the Work are 50% complete and the Architect has so certified to the Owner that the Project and the Work are 50% complete, retainage shall not be deducted from a subsequent Application for Payment except as necessary to keep the total retainage at all times equal to not less than 5% of the sum of all components of the Contract Sum for which Applications for Payment have been submitted.

(d) The amount necessary to complete the remaining Work.

Each Application for Payment shall show that ten percent (10%) of each requested progress payment for each Subcontractor shall be withheld from payment to the Contractor by the Owner until the Work performed by such Subcontractor is completed and accepted by the Owner, and upon and after such acceptance the Contractor may, in its then current Application for Payment, request release of the retainage, if any, withheld from such progress payment on account of such Subcontractor’s work, and Owner may, subject to the foregoing provisions of

this Article 5 and the other provisions of the Contract Documents, release such retainage so long as the total retainage that continues to be withheld by Owner is at all times equal to not less than 5% of the sum of all components of the Contract Sum for which Applications for Payment have been submitted. Each Application for Payment shall show the ten percent (10%) withholdings as specific deductions from the amounts payable to Subcontractors (or on purchase orders). The amounts retained by the Owner under this Contract shall be to ensure the faithful and complete performance of the Work. Each Application for Payment shall be accompanied by a duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all Subcontractors and where appropriate from lower tier subcontractors as the Owner may require. If the statements accurately reflect the progress of the Work, and the Application for Payment and the other documentation required hereunder are otherwise accurate and complete, the Owner shall, within ten (10) days thereafter, approve the Application for Payment. Within twenty (20) days thereafter the Owner will pay the Contractor the amount of the request, provided all requirements of the construction escrowee selected by Owner, if any, and mutually acceptable to the Owner, the Lender, if any, and the Contractor ("Escrowee") are satisfied, through a customary Owner's Construction Escrow ("Escrow"). No Application for Payment shall require payment by the Owner unless and until the Escrowee notifies the Owner, in writing, that the title insurance company as the Owner may elect (the "Title Company") shall, with an effective date as of the date of such notice and amount of coverage increased to cover the payment contemplated under the Application for Payment, insure title to the Site in the name of the Owner by issuing to the Owner an owner's title insurance endorsement in a form reasonably acceptable to Owner. The Escrow shall provide for issuance at Owner's option, of checks jointly payable to Contractor and the Subcontractors. The cost of the Escrow shall be the Owner's expense.

The first payment request shall be accompanied by the Contractor's partial lien waiver for the full amount of the payment. All lien waivers shall be in form and substance satisfactory to Owner and in compliance with all applicable laws, rules, ordinances, regulations and codes. Each subsequent monthly payment request shall be accompanied by the Contractors partial lien waiver and the partial lien waivers of Subcontractors, Sub-subcontractors and material suppliers who were included in the immediate preceding payment request, to the extent of that payment, (i.e., the Contractor must submit its partial lien waivers on a current basis, but Subcontractors and Suppliers may be not more than one payment late with their partial lien waivers and sworn statements). Should the Title Company not approve (or revoke approval of) the above "delayed waiver procedure", the Contractor and Subcontractors shall be required to submit waivers in full prior to the current requested payment. In the event lien waivers of Subcontractors, Sub-subcontractors and material suppliers are not submitted in the month immediately following the month in which payment was made by Owner for services performed by such Subcontractors, Sub-subcontractors and/or material suppliers, as the case may be, the Owner shall without future payments to the Contractor until such lien waivers are received or bonded over in a manner satisfactory to Owner in its commercially reasonable discretion.

The following language is hereby added to Section 5.2.2 following the words "as follows":

5.2.2 When the Work is Substantially Completed, the Owner and Contractor shall prepare a punch list of Work that remains to be done, showing the estimated cost of each item that remains to be done. Upon acceptance of the Work, except for punch list items, the retainage shall be reduced to 200% of the value of the punch list items. Final payment shall be made within thirty (30) days after final acceptance of the Work by the Owner, provided all final waivers of lien and all other specified documentation has been received and approved by the Owner and Escrowee has approved payment. Prior to final payment, the Contractor shall deliver to the Owner a marked-up set of drawings showing all changes and all field conditions and showing the complete "as built" condition of the Project.

ARTICLE 6

TERMINATION OR SUSPENSION

The following new Section is hereby added to the Contract:

6.3 OWNER'S RIGHT TO TERMINATE.

Notwithstanding any other termination right the Owner may have under the terms of the Contract, at any time prior to the delivery of a notice to proceed from Owner, the Owner, in its sole and absolute discretion, may terminate the Contract by giving the Contractor written notice of the Owner's termination of the Contract, and Owner and Contractor shall have no further responsibilities hereunder, except for those responsibilities that expressly survive such termination.

ARTICLE 7

MISCELLANEOUS PROVISIONS

The following new Sections are hereby added to the Contract:

7.7.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- (i) that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- (ii) that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder;

- (iii) that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public and quasi public authorities having jurisdiction over it and over the Work and the Site;
- (iv) that its execution of the Owner Contractor Agreement and its performance thereof is within its duly authorized powers; and;
- (v) that its duly authorized representative has visited the Site, familiarized itself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents;
- (vi) that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor; and
- (vii) that it is fully familiar with the Site and all conditions, whether surface or subsurface, that may affect the Work and that the Contract Sum shall not be changed as a result of Site conditions; provided, however, that the Contract Sum may be adjusted for additional costs resulting from concealed conditions of which the Contractor could not have known, with the exercise of reasonable diligence

The foregoing warranties are in addition to, and not in lieu of, any and all of their liability imposed upon a Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

7.7.2 CONSTRUCTION ESCROW.

If required by the Owner or the Owner's construction lender (the "**Lender**"), if any or all payments to the Contractor shall be made through a construction escrow (hereinafter referred to as the "**Escrow**") established with a construction escrowee selected by Owner (if any) ("**Escrowee**") and mutually acceptable to the Owner, the Lender, if any, and the Contractor. The Contractor hereby agrees to: execute an escrow agreement that shall be (1) consistent with the requirements of the Contract Documents, except as the standard procedures of the Escrowee may otherwise require, (2) structured to provide that the Escrowee may disburse funds directly to Subcontractors or to the Contractor and Subcontractors payable jointly, if so directed by the Owner, the Architect, and the Contractor (the "**Escrow Agreement**"). All parties thereto shall use best efforts to cooperate with the Escrowee.

7.8 PATENTS AND ROYALTIES.

Contractor shall pay or cause to be paid all royalties and license fees related to the Work. Contractor shall, at its own expense and at no expense to the Owner, defend all suits or claims for infringement of any patent rights relating to equipment or materials incorporated in the Work and shall save the Owner harmless from loss on account thereof. However, the Owner shall be responsible for all such loss arising out of the use of any particular manufacturer(s) required to be used by the Owner, unless Contractor has reason to believe that process or product specified

by the Owner is an infringement of a patent and Contractor fails to give such information to the Owner.

7.9 TIME.

Time is of the essence of this Contract, the other Contract Documents and each of the requirements set forth therein.

7.10 COMPLIANCE WITH REQUIREMENTS.

Except to the extent hereafter otherwise directed by Owner in the case of fees, approvals, permits, licenses or other matters hereafter specified by Owner as being the responsibility of Owner to procure, pay for or obtain waivers of, the Contractor shall be responsible for paying for and obtaining building permits and any and all other permits, licenses, approvals, fees and inspections necessary for proper execution and completion of the Work and compliance with all Requirements, shall give all notices and comply with all Requirements and shall obtain any required certificate of occupancy relating to the Work or the performance thereof. The Contractor shall be liable to the Owner for any delay in the performance of the Work resulting from the Contractor's failure to fully comply with the provisions of this Section 7.10 to the extent of Contractor's Work.

7.11 GOVERNING LAW.

This Contract shall be governed by the laws of the State of Illinois without application of its conflict of law principles or provisions.

7.12 NOTICES.

Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) upon receipt if hand delivered, (ii) if mailed (effective three (3) business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested, (iii) if delivered by overnight express delivery courier (effective one (1) business day after deposit with such courier), or (iv) upon receipt if delivered by telecopier or telefax (with a follow-up notice given pursuant to clauses (i), (ii), or (iii)), in each case addressed as follows (or at such other address or to such other-person or entity as the party to be served with notice made and furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice).

If to Owner:

North Dayton Holdings, Inc.
c/o Grossinger Motors
151 East Lake Cook Road
Palatine, Illinois 60074
Attn.: Gary Grossinger

With Copy to:

Neal Gerber Eisenberg
Ross D. Emmerman
Two North LaSalle St., Suite 2000
Chicago, Illinois 60602
312-269-8051

If to Contractor:

Valenti Builders, Inc.
225 Northfield Road
Northfield, Illinois 60093
Attn.: Austin V. Stanton, Jr.
Telecopier: (847) 446-2610

With Copy to:

7.13 EQUAL OPPORTUNITY.

The Contractor shall not discriminate in the selection of Subcontractors or material suppliers because of sex, sexual orientation, religion, race, creed, color, national origin, age, handicap or other protected class.

PART II

AMENDMENTS TO FORM A201

The Owner and Contractor agree that the following provisions are hereby incorporated into Form A201 where indicated by the Article and Section number reference:

ARTICLE 1

GENERAL PROVISIONS

1.1 The words "the Rider to the Agreement, attached hereto and executed in connection herewith (the "**Rider**")," shall be added to the first line of Article 1 after the word "Agreement."

ARTICLE 2

OWNER

The following new Section is hereby added to the Contract:

2.4.2 Neither the Owner nor its affiliates or any of their respective members, managers, officers, directors, shareholders, partners, agents, advisors, employees, successors or assigns are in any way liable or accountable to the Contractor for the method by which completion of the Work, or any portion thereof, is accomplished, or the price paid therefore. If the cost of finishing the Work in accordance with prevailing industry standards, including compensation for any additional Architect's services, as provided in Section 2.4.1, is greater than the portion of the Contract Sum not theretofore paid, the Contractor shall be liable to the Owner for the payment of such excess and shall promptly pay such amount upon demand by the Owner. The Owner does not waive the right to recover damages from the Contractor for failure to complete the Contract by taking over the Work or declaring the Contractor in default hereunder.

ARTICLE 3

CONTRACTOR

The following new Sections are hereby added to the Contract:

3.3.4 The Contractor shall also perform the following functions for the Project (for which the Contractor shall not be entitled to any additional fee or compensation other than the Contract Sum), which functions shall consist of: (i) consulting with and advising the Owner and the Architect relative to planning and coordinating the Work as required from time to time, (ii) the management and coordination of the Subcontractors performing the Work, and (iii) the provision of other general services, all with the objective of completing the Work as required by the Drawings and Specifications and within budgets and schedules approved by the Owner. Such management functions shall include, but not be limited to, the following:

1. Review all documents prepared by the Architect with respect to the Project and advise on such matters as the economy and construction expediency of systems and materials, costs of materials and components, possible conflicts and overlapping jurisdictions among Subcontractors, trade unions and suppliers, and schedule considerations.
2. Advise the Owner and the Architect regarding division of the Work for the purpose of obtaining competitive bids and the awarding of subcontracts.
3. Assemble bid packages for the purpose of soliciting competitive bids and awarding subcontracts to various Subcontractors; specify the scope of Work for each subcontract; provide supplementary information such as that needed for inclusion in the Contract Documents, and advise on such other matters as alternates to be requested and schedule implications.
4. Make arrangements for temporary construction facilities at the Site to be used by the Contractor and Subcontractors and assign to each Subcontractor the area and facilities for his use.
5. Maintain a competent full time Project Superintendent at the Site for the management and coordination of the Work, including the portion of the Work to be performed by Subcontractors. Provide general service and facilities in the support of all Subcontractors, including, but not limited to, trash removal, toilets and washrooms, and fire protection, and their maintenance and general purpose hoists.

6. Develop procedures, subject to the Owner's approval, for coordination among the Owner, the Architect, the Contractor, and the various Subcontractors with respect to all aspects of the construction of the Project and implement and administer these procedures.
7. Conduct regularly scheduled (in no event less than weekly) job meetings, and special meetings as required, to be attended by the Architect, the Subcontractors and the Owner to discuss, among other things, such matters as procedures, progress, problems, coordination and scheduling. Minutes of such meetings shall be prepared by the Contractor and copies thereof shall be furnished to all interested parties, including but not limited to the Owner and its lender.
8. Coordinate the Work by the Subcontractors on the Project until final completion satisfactory to the Owner and acceptance of the Project by the Architect. Provide such inspection services as are required to ascertain that the materials furnished and Work performed are in accordance with the Contract Documents.
9. Make recommendations to the Owner and the Architect regarding prequalification's of Subcontractors based on the Contractor's determination of the adequacy of their personnel, equipment and financing strength. Make recommendations for approval of Subcontractors, principal vendors, and contract sums.
10. Establish and maintain quality control procedures for all parts of the Work. Take measures to prevent the installation of any Work not in conformity with the Contract Documents, including, but not by way of limitation, material or equipment not properly approved, suspend operations upon the installation thereof, and report promptly to the Owner that the particular Work or material fails to conform to the Contract Documents. Ascertain that all tests of soils, cement, concrete, structural or reinforcing steel, or any other material or equipment required to be tested under the terms of the Contract Documents are performed by qualified consultants.
11. Establish comprehensive safety and fire protection programs for the Project. Coordinate with subcontractor as to the construction procedures and techniques to be employed, review those programs for safety and coordination, and maintain surveillance of them throughout the course of construction. Require compliance by all Subcontractors with the provisions of the federal Occupational Safety and Health Act (OSHA) and all other applicable federal, state and local laws, rules, regulations and orders. Cooperate with, and give support to, the safety representatives of the insurance carriers.
12. Review labor availability and analyze types and quantity of manpower required for the Project and forecast the availability thereof as and when needed.
13. Develop and administer an effective labor relations program for the Project to minimize labor disputes during construction and assure that all trades work in harmony with each other.
14. In coordination with the Owner and the Architect, establish and implement procedures to be followed for the processing of Shop Drawings, catalogs and Samples and the scheduling of material requirements.
15. Maintain equipment and material delivery records and inventory records for tools, equipment, machinery and office furniture acquired and employed in managing the Work.

16. Prior to the commencement of the Work, and during the course of the Work, the Contactor shall deliver to both Owner and Architect a contractor's sworn statement, duly executed and acknowledged, listing all Subcontracts entered into as of that date and the amount of each Subcontract, together with a similar sworn statement from each Subcontractor, and where appropriate, from each Sub-subcontractor and such other documents reasonably requested by Owner or Architect of cost and payments so that Owner and Architect can verify that the amounts paid from time to time are represented by completed and in place work.
17. Collect and deliver to the Owner in orderly fashion all guarantees, warranties, maintenance and operations manuals, part lists, keying schedules, and other data required of the Subcontractors. As directed by the Owner, prepare for the Owner's use operating manuals for the various building systems.
18. Maintain on the Project orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions or original Contract Documents, including all addenda, Change Orders, supplemental drawings and all other Project related documents.
19. Maintain a daily field report describing Work and activities accomplished on each working day, the number of men employed at the Site by each Subcontractor, material deliveries, labor difficulties, observations in general and specific observations as required.
20. Promptly advise the Owner and Architect as to the feasibility, costs, delay or acceleration, or other adverse or beneficial effects on schedule or costs anticipated with respect to proposed or ordered changes or extra work. and promptly advise the Owner and Architect with respect to any and all matters affecting either Project costs or progress.
21. Provide a Project office at the Site adequate for the personnel and office facilities of the Project staff and the Contractor and with space and facilities for the Owner's and the Architect's representations.
22. Furnish all supervision, labor, equipment, tools, materials, supplies, construction utilities, construction utility hookups and connections and other incidentals necessary to construct the Project and shall obtain all necessary licenses, permits, consents and other authorizations therefor.
23. Examine the Work performed, and the, materials supplied, by the Subcontractors and to cause them to make any and all necessary repairs or replacements and to supervise the same, it being the responsibility of the Contractor to ensure the compliance of all Work performed by any Subcontractors, and all materials supplied by materialmen, with the Contract Documents.
24. Assign all guarantees by subcontractors, materialmen or suppliers to the Owner following completion of the Work as a whole and acceptance of the Work by the Owner.
25. During the one-year period commencing on the date of Substantial Completion of the finished Project by the Owner with substantially all equipment in place the Contractor shall cause all Subcontractors to correct any defect in materials or workmanship, and if such Subcontractors fail to so perform, the Contractor shall promptly correct or cause to be corrected all such defects itself.

3.4 LABOR AND MATERIALS.

The following new Section is hereby added to the Contract:

3.4.4 Notwithstanding the delivery to and storage on the Site of materials, equipment and facilities to be incorporated into the Work by the Contractor and the partial or total payment by the Owner, the Contractor shall be responsible for, and shall bear all losses with respect to, the care and maintenance of such materials, equipment and facilities until they have been incorporated into the Work, and such portion of the Work has been accepted by the Owner. The Contractor shall store all materials delivered to the Site in the area so designated therefore by the Architect or Owner so as to facilitate the orderly progress of the Work. If the Contractor does not store such materials in accordance with such directives, the Contractor shall bear the cost, if and when incurred, of moving such materials, as well as the cost of *any* damage attributable to the unauthorized storage of such materials. The Contractor shall not be responsible for the storage of materials by the Owner on the Site not related to the Work, and the Owner shall not store *any* such materials so as to interfere with the Contractor's execution of the Work. Acceptance of materials by or on behalf of the Owner (other than materials, fixtures or equipment provided directly by the Owner) shall not bar future rejection if subsequently found to be defective or inferior in quality or uniformly to materials specified in the Contract Documents, or if such materials are found not to be as represented. The Contractor's responsibility set forth in this Section 3.4.4 shall be subject to (and reduced by) amounts received or recoverable under applicable insurance required to be maintained by the Contract Documents.

3.7 PERMITS, FEES AND NOTICES.

3.7.3 The words "or has knowledge" shall be added in the second sentence of Section 3.7.3 after the words "if the Contractor observes."

3.13 USE OF SITE.

The following new Sections are hereby added to the Contract:

3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

3.13.3 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

3.18 INDEMNIFICATION.

Section 3.18.1 is deleted in its entirety and replaced with the following:

3.18.1 Except as provided in this Section 3.18, to the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, its affiliates and each of their respective members, managers, officers, directors, stockholders, partners, employees, advisors, agents, successors and assigns (collectively, the "**Owner Indemnitees**") from and against all claims, damages, fines or penalties, losses and expenses (including, but not limited to, reasonable attorney's fees) arising out of or resulting from the performance or non-conformance of the Work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or any injury to or destruction of tangible property (either of the Owner or any third party), including the loss of use resulting therefrom, or (ii) is caused in whole or in part by any negligent act or omission or intentional misconduct of the Contractor, anyone directly or indirectly employed by the Contractor, or anyone for whose acts Contractor may be liable (collectively "**Contractor Group**").

In *any* and all claims against any one or more of the Owner Indemnitees by *any* employee of *any* one or more of the Contractor's Group, the indemnification obligation under this Section 3.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for any one or more of the Contractor's Group under worker's compensation acts, disability benefit acts or other employee benefit acts.

If not first notified by the Owner, the Contractor shall promptly notify the Owner of any claim or litigation of which the Contractor becomes aware to which the indemnification set forth herein may apply.

The Contractor shall be obligated to assume, at its sole expense, the defense of any claim or litigation as to which it has an indemnification obligation hereunder. Any one or more of the Owner Indemnitees shall have the right to be represented by separate counsel at its own expense in connection with any such claim, and the Contractor and its counsel shall cooperate in connection therewith. If the Contractor fails to so assume such defense, the Contractor shall be obligated to reimburse each indemnified party on a current basis for *any* and all expense (including reasonable attorney's fees and costs of investigation) incurred in the defense of such claim or litigation or in enforcing the terms of this indemnity, in addition to the Contractor's other obligations hereunder. So long as the Contractor has assumed the defense of any indemnified claim hereunder and is actively pursuing such defense, the indemnified parties may not settle or compromise such claim without Contractor's written consent, which shall not be unreasonably withheld or delayed. If the Contractor does not so assume the defense of a claim, the indemnified parties may settle such claim and shall promptly be reimbursed by the Contractor for all costs of such indemnitee(s) relating to such settlement. If the Contractor fails to reimburse the Owner promptly, the Owner may, without limitation of its other rights and remedies, withhold all costs related to such settlement from *any* monies due the Contractor. Notwithstanding anything to the contrary contained herein, in no event shall the Contractor's indemnification obligations exceed the limits of the Contractor's insurance as set forth on the that certain Certificate of Insurance attached hereto as Attachment 6.

The obligations of the Contractor pursuant to this Section 3.18 shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any one or more of the Owner Indemnitees. The indemnification obligation of the Contractor under this Contract shall survive the completion of the Project or termination of the Contract consistent with the relevant statute of limitations and these obligations are in addition to the Contractor's obligations to purchase and maintain policies of insurance under this Contract.

The following new Sections are hereby added to the Contract:

3.18.3 Without limiting the generality of Section 3.18.1, the Contractor further agrees to indemnify and hold the Owner, the Architect and all other Owner Indemnitees harmless from any and all losses or damages arising out of jurisdictional labor disputes or other labor troubles of *any* kind that may occur during performance of the Work except to the extent the same arises in connection with persons (other than Contractor) hired or employed directly by the Owner.

3.18.4 Without limiting the generality of 3.18.1, the Contractor and all Subcontractors shall indemnify, defend and hold harmless the Owner and all other Owner Indemnitees from any and all claims, demands, causes of actions or suits of whatever nature arising out of services, labor, equipment or materials furnished by the Contractor in the performance of the Work, and from all laborers', mechanic's and materialmen's liens upon the property upon which the Work is to be performed, and arising out of the services, labor equipment or materials furnished by the Contractor, and the Contractor shall keep all materials, tools, equipment and machinery used in connection with any of the Work free and clear of all liens, claims and encumbrances of *any* nature whatsoever arising from the performance of the Work by the Contractor or any Subcontractors, to the extent permitted by Illinois law.

3.18.5 Without limiting the generality of the foregoing, provided the Owner makes payments as required by this Contract, the Contractor agrees that all Work and materials called for by this Contract shall be paid for as the same become due. If any claim, lien, charge or encumbrance is claimed, maintained or filed by anyone for any Work done, labor performed or material furnished for or in connection with the Work covered by this Contract, the Contractor agrees to defend the Owner and to indemnify and hold harmless the Owner from and against any and all loss, cost or damage that the Owner may sustain as a result thereof, including, without limitation, reasonable attorneys' fees incurred by the Owner in connection therewith. Contractor shall cause any claim or notice of lien that may have been recorded against the Site or Project to be removed from the record, or shall provide a bond over any such claim for the Owner. Title to all Work, whether completed or in progress, and all materials, equipment, tools and supplies, for which the Owner has made payment, shall pass to the Owner simultaneously with such payment.

3.18.6 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines; penalties, damages, liability costs, expenses (including; without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as

required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

The following new Sections are hereby added to the Contract:

3.19 AS BUILT DRAWINGS.

3.19.1 As the Work progresses, the Contractor shall maintain a current and accurate record of all deviations from the Drawings and Specifications which occur in the Work as actually constructed and installed. Upon completion of the Work, and prior to final payment, the Contractor shall furnish to the Owner two complete record sets, one of which shall be a set of mylar reproducible documents, of "as built" drawings for HVAC, fire protection, electrical and glass and glazing, and such other descriptions, drawings, sketches, marked prints and similar data, depicting the Project as modified during construction, with the exception of architectural and structural "as built" drawings which shall be prepared by the Architect.

ARTICLE 4

ADMINISTRATION OF CONTRACT

The following new Section is hereby added to the Contract:

4.3.11 In the event of a dispute between the Contractor and the Owner as to the Work, the payments due hereunder or any other matter, the Contractor shall not be entitled to stop work, and shall continue the Work hereunder with all due diligence, provided the Owner continues to make payments of all amounts not in dispute.

ARTICLE 5

SUBCONTRACTORS

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 The word "written" is hereby added to the first line of Section 5.3.1 after the words "By appropriate", and the words "written where legally required" are hereby deleted from the first line of Section 5.3.1.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.3 The word "Other" is hereby deleted from Section 6.1.3 and replaced with the word "Owner".

ARTICLE 7

CHANGES IN THE WORK

7.1 GENERAL

7.1.3 The following language is hereby added to the end of Section 7.1.3:

“Anything in the Contract Documents to the contrary notwithstanding, only a Change Order or a Construction Change Directive shall accomplish a change in the Contract Sum or Contract Time in connection with the Work.

The Contractor shall not receive any compensation or adjustment in the Contract Sum in connection with any work or service provided in connection with the Project unless such work or service is authorized by a Change Order or a Construction Change Directive.

Agreement on any Change Order shall constitute final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, without limitation, all direct and indirect costs associated with such changes and *any* and all adjustments to the Contract Sum and the Construction Schedule.”

The following new Section is hereby added to the Contract:

7.2.3 Notwithstanding anything to the contrary contained in any of the Contract Documents, no change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition or increase to the Contract Sum or a change in the Project Schedule, unless and until such alteration or addition has been authorized in writing by a Change Order executed by the Owner’s Representative and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor the express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact *any* such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Project Schedule.

Unless otherwise notified in writing by the Owner, only the Owner’s Representative shall have the authority to execute Change Orders on behalf of the Owner, approve the preliminary plans and the Plans and to otherwise bind the Owner under the terms of this Contract. All deliveries made to the Owner shall be marked to the attention of the person(s) then acting as the Owner’s Representative.

ARTICLE 8

TIME

8.2 PROGRESS AND COMPLETION

The following new Sections are hereby added to the Contract:

8.2.4 Prior to commencement of construction, Contractor shall submit, for approval by Owner and Architect, a complete and detailed schedule ("**Schedule**") reasonably and clearly defining unitary and total times for completion of each portion of the Work. Upon approval by Owner and Architect, the Schedule will become part of the Contract Documents. Contractor shall maintain the Schedule and meet all critical path dates. Contractor shall not be reimbursed for overtime or shift work, and no adjustment shall be made to the Contract Sum, to meet the Schedule. The Contractor acknowledges that a high level of planning and a detailed Schedule are necessary to complete the Project within the times set forth in this Agreement and further represents and warrants to the Owner as a material inducement to the execution of this Agreement, that he has considered all risks and occurrences that could affect the timely completion of the Project and has carefully examined the Contract Documents prepared as of the date of this Agreement, and has determined that, absent any changes in the scope, quality, function and/or intent of the Project, the Work can be completed, and the Contractor shall cause the same to be completed, in accordance with the time requirements set forth herein.

8.2.5 The Owner shall have the right, if it deems it necessary or advisable, to take possession of or use any completed or partially completed portions of the Work even if the time for completing the entire Work has not expired but not until the Work has been accepted. Such possession and use shall not constitute an acceptance or completion of such portions of the Work unless all Punch List items have been completed and accepted by the Owner. Use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of his responsibility to maintain all insurance and bonds required by the Contract on the uncompleted portion until the Project is fully completed and accepted by the Owner.

ARTICLE 9

PAYMENTS AND COMPLETION

9.6 PROGRESS PAYMENTS

9.6.1 Section 9.6.1 is hereby deleted in its entirety and replaced with the following:

9.6.1 The Architect's Certificate of Payment shall be processed and forwarded to the Owner and the Owner's title company within 10 days after the Architect's receipt of the Contractor's Application for payment. Within 30 days after receipt of the Architect's Certificate for payment, the Owner shall direct the title company through which a construction escrow has been established to make payment to the Contractor of the amount specified in the Certificate of Payment (which shall provide for all applicable retentions). Such payment by the title company shall be subject to all requirements of the title company and shall not constitute approval or acceptance by Owner of any item of cost in the Application for Payment. No partial payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or relieve the Contractor of any of its obligations - hereunder with -respect thereto. The -Owner-and- the title-company shall :make - no payment until the title company has received from the Contractor a release of liens on a trailing basis from the Contractor for the Contractor and all Sub-Contractors for the portion of the work covered by such payments.

9.7 FAILURE OF PAYMENT

9.7.1 The word “seven” in the second line of Section 9.7.1 is hereby deleted and replaced with the word, “ten”. The word “seven” in the third line of Section 9.7.1 is hereby deleted and replaced with the word, “fourteen”, and the words “or title company” are hereby added after the word “Owner”.

The following new Section is hereby added to the Contract:

9.7.2 If the Owner is entitled to reimbursement under a claim or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner’s sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.3 HAZARDOUS MATERIALS

10.3.3 The phrase “and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity” is hereby added to the end of the first sentence of Section 10.3.3.

10.4 The following sentence is hereby added after the first sentence of Section 10.4: “Contractor shall be responsible for all such materials on the Site which were brought to the Site by or under the direction of the Contractor or any Subcontractor. Contractor shall, and shall cause all Subcontractors to, comply with all applicable environmental laws.”

ARTICLE 11

INSURANCE AND BONDS

CONTRACTOR’S LIABILITY INSURANCE

The following is hereby added to the end of Section 11.1.1:

11.1.1 The Contractor shall maintain, at its own expense, the insurance coverages, insuring the Contractor and the Owner as set forth in that certain Certificate of Insurance attached hereto as Attachment 6 and incorporated herein by reference, which shall incorporate a provision requiring giving of written notice to the Owner at least thirty (30) days prior to the cancellation, nonrenewal, modification or amendment of any such policies. The maintenance by Contractor of

such insurance policies shall not relieve the Contractor, or its agents or employees, of any obligations or liabilities it might otherwise have to the Owner.

In addition to the Certificate of Insurance attached hereto as Attachment 6, the Contractor shall submit renewal certificates at least 30 days prior to the expiration of any coverage updated valid certificates, in form and substance satisfactory to the Owner, evidencing the foregoing insurance policies, on or before the expiration of the policies set forth on the Certificate of Insurance, and shall keep such insurance in effect throughout the term of this Contract. In no event shall failure by the Owner to receive certificates hereunder constitute a waiver of Contractor's insurance requirements.

The Contractor agrees to maintain the insurance described herein during construction and with completed operations coverage for three years after completion of the Work. If the Contractor fails to furnish and maintain such insurance, the Owner may purchase such insurance on behalf of the Contractor and the Contractor shall pay the costs thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance that may arise from its operations connected with the Project.

If by the terms of Contractor's insurance requirements any deductibles are maintained, the Contractor shall be responsible for payment of such deductibles in the event of a claim.

The Contractor shall cause the Owner and Architect to be added to its insurance policies as additional insureds and the certificates of insurance delivered to the Owner shall so indicate.

Section 11.1.3 is hereby deleted in its entirety and replaced with the following:

11.1.3 Contractor shall have the Owner, Architect and the Owner's lender named as additional insureds to the preceding Comprehensive General Liability Insurance policy, or supply, with Owner's written approval a separate Owner's and Contractor's Protective policy naming (with limits of liability as specified above) the Owner as an additional insured. The insurance policies shall be endorsed to indicate that they are primary as respects the Owner and not contributory with any other insurance available to the Owner. Each policy shall contain the following cross liability provisions:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies has been issued to each insured hereunder".

The following new Sections are hereby added to the Contract:

11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Section 11.1, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

11.1.6 The Contractor shall cause each Subcontractor to (i) procure insurance reasonably satisfactory to the Owner and Contractor and (ii) name the Indemnitees as additional insureds set forth in the Contractor's insurance under the Subcontractor's comprehensive general liability

policy which shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

ARTICLE 13

MISCELLANEOUS PROVISIONS

The following new Section is hereby added to the Contract:

13.8 APPROVALS, CONSENTS, AUTHORIZATIONS.

All approvals, consents or authorizations required pursuant to this Contract that have (or could have) a material effect on the obligations or rights of the Owner or Contractor shall be in writing executed by the Owner's Representative and the Contractor. It is understood that the written approval of any meeting minutes or notes shall only be the approval of the form of such minutes or notes and general content of the subject of such meeting and shall not be deemed an authorization or consent to the action or inaction that is the subject of the meeting, unless such written approval of such minutes or notes expressly states to the contrary. In no event shall such minutes, notes or approval constitute a Change Order.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.1.4 Section 14.1.1.4 is hereby deleted in its entirety.

8/4/08

**ATTACHMENT 8
REDEVELOPMENT AGREEMENT**

**GROSSINGER CITY AUTOPLEX
1500 N. DAYTON STREET
CHICAGO, IL 60622**

The following clauses from the executed Redevelopment Agreement are hereby incorporated into this agreement:

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 five percent (5%) or elimination of any accessibility or adaptability features; (b) a change in the use of the Property to a use other than an automobile sales and service center; (c) a delay in the completion of the Project by more than ninety (90) days; or (d) Change Orders costing more than ten percent (10%) of the Project budget. 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 ten percent (10%) of the Project Budget, 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.

8.09 Prevailing Wage. The Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this Section 8.09.

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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 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 works 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.

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(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 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 20-92-330 of the Municipal Code of Chicago in accordance with standard and procedures developed by the Chief Procurement Officer of the City.

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

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

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

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

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

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

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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

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MBE/WBE Program to the extent contained in, 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 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 Section 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal code of Chicago, the Developer’s MBE/WBE commitment may be achieved in part by the Developer’s status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing an MBE or 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 material 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 an 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 monthly 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 General Contractor to work on the Project, and the responses received from such solicitation, the name and 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

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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 obligation 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 obligation 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.

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SECTION 12. INSURANCE

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

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

(i) Worker's Compensation and Employers Liability Insurance

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

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

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

(b) Construction

(i) Worker's Compensation and Employers Liability Insurance

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

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

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

(iii) Automobile Liability Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

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

(v) Builders Risk Insurance

When the Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery, and fixtures that are or will be part of the

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permanent facility. Coverages shall include, but are not limited to the following: collapse, boiler and machinery if applicable. The City of Chicago shall be named as an additional insured and loss payee.

(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

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

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(c) Term of the Agreement

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

(d) Other Requirements

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

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

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

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

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

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

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

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

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

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

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

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

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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.

EXHIBIT F
ESCROW AGREEMENT

[See attached]



Escrow No. NCS 312727NC

FIRST AMERICAN TITLE INSURANCE COMPANY
OWNERS CONSTRUCTION DISBURSING AGREEMENT

Date: July 1st, 2008

Refer To: 1500 N. Dayton

To: First American Title Insurance Company, Escrowee

NORTH DAYTON HOLDINGS, INC. (hereinafter described as Owner) will deposit, from time to time, certain sums of money and will deposit or cause to be deposited general contractor's sworn statement together with partial or final waivers of lien from contractors, sub-contractors and suppliers in connection with construction work in process at 1500 North Dayton Street, Chicago, Illinois, together with appropriate payment orders. Lien waivers from the general contractor's subcontractors, suppliers, etc. will be on a trailing basis.

You are authorized and directed to proceed as follows:

When you receive a request in writing from Owner that certain designated contractors, subcontractors and suppliers be paid, you shall issue your checks to them directly in the various amounts specified for each, provided that the following conditions have been complied with:

1. Sufficient funds in the form of certified or cashier checks or electronic transfer of funds have been deposited with you by Owner to cover payment requester.
2. You have received statements and waivers from the persons to whom and in the amounts that payments are to be made. Lien waivers from the general contractor's subcontractors, suppliers, etc. will be on a trailing basis.
3. That said statements and waivers are found to be in proper form for the purpose of releasing and waiving any and all rights to file mechanics lien claims against the premises in question for those amounts and the work or materials for which they represent payments only.
4. You have received a certification from Gensler, Architect, in a form acceptable to Owner, that the labor and material for which payment is requested has been properly performed or is in place on the premises in question.
5. You have furnished Owner with a tract book search and Owner or its attorneys have furnished written approval of the condition of title.

It is further understood that you make no representation that a title insurance policy insuring over mechanics lien claims will necessarily be issued without additional requirements being met.

Escrowee has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

Escrowee shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of the Escrowee.

It is further understood that no responsibility is assumed by you concerning the sufficiency of funds deposited herein to complete the contemplated constructions satisfactorily.

Your charges hereunder are to be billed to Owner. The payment thereof is established as conditions precedent to your final disbursement.

Interest, income or other benefits, if any, earned or derived from the funds deposited shall belong to First American Title Insurance Company. First American title Insurance Company may deposit all funds received hereunder to one or more of its general accounts. First American Title Insurance Company shall be under no duty to invest or reinvest any funds, at any time, held by its pursuant to the terms of this agreement.

This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument.

NORTH DAYTON HOLDINGS, INC.

By: 
Owner

Accepted: First American Title Insurance Company, Escrowee

By: _____

General Contractor:

The undersigned acknowledges that it is neither a party to the Owner's Disbursing Agreement nor does that agreement confer any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than First American title Insurance Company and North Dayton Holdings, Inc. (Owner) under a third party beneficiary theory or otherwise under any theory of law.

The undersigned agrees that the improvements referred to in the escrow agreement will be constructed and completed in strict accordance with the plans and specifications and the building contract. The undersigned also concurs in the above escrow instructions signed by the Owner or their representatives.

Valenti Builders, Inc.

or the General Contractor

Escrowee has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

Escrowee shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of the Escrowee.

It is further understood that no responsibility is assumed by you concerning the sufficiency of funds deposited herein to complete the contemplated constructions satisfactorily.

Your charges hereunder are to be billed to Owner. The payment thereof is established as conditions precedent to your final disbursement.

Interest, income or other benefits, if any, earned or derived from the funds deposited shall belong to First American Title Insurance Company. First American title Insurance Company may deposit all funds received hereunder to one or more of its general accounts. First American Title Insurance Company shall be under no duty to invest or reinvest any funds, at any time, held by it pursuant to the terms of this agreement.

This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument.

NORTH DAYTON HOLDINGS, INC.

By: _____

Owner

Accepted: First American Title Insurance Company, Escrowee

By: Dennis Saavedra, National Construction Escrow Officer

General Contractor:

The undersigned acknowledges that it is neither a party to the Owner's Disbursing Agreement nor does that agreement confer any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than First American title Insurance Company and North Dayton Holdings, Inc. (Owner) under a third party beneficiary theory or otherwise under any theory of law.

The undersigned agrees that the improvements referred to in the escrow agreement will be constructed and completed in strict accordance with the plans and specifications and the building contract. The undersigned also concurs in the above escrow instructions signed by the Owner or their representatives.

Valenti Builders, Inc.

for the General Contractor

Escrowee has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

Escrowee shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of the Escrowee.

It is further understood that no responsibility is assumed by you concerning the sufficiency of funds deposited herein to complete the contemplated constructions satisfactorily.

Your charges hereunder are to be billed to Owner. The payment thereof is established as conditions precedent to your final disbursement.

Interest, income or other benefits, if any, earned or derived from the funds deposited shall belong to First American Title Insurance Company. First American title Insurance Company may deposit all funds received hereunder to one or more of its general accounts. First American Title Insurance Company shall be under no duty to invest or reinvest any funds, at any time, held by its pursuant to the terms of this agreement.

This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument.

NORTH DAYTON HOLDINGS, INC.

By: _____

Owner

Accepted: First American Title Insurance Company, Escrowee

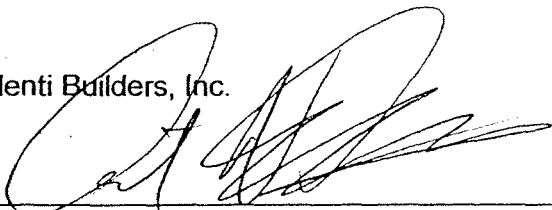
By: _____

General Contractor:

The undersigned acknowledges that it is neither a party to the Owner's Disbursing Agreement nor does that agreement confer any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than First American title Insurance Company and North Dayton Holdings, Inc. (Owner) under a third party beneficiary theory or otherwise under any theory of law.

The undersigned agrees that the improvements referred to in the escrow agreement will be constructed and completed in strict accordance with the plans and specifications and the building contract. The undersigned also concurs in the above escrow instructions signed by the Owner or their representatives.

Valenti Builders, Inc.



For the General Contractor

EXHIBIT G

PERMITTED LIENS

1. Liens or encumbrances against the Property:

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

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

EXHIBIT H-1
PROJECT BUDGET

Sources and Uses of Funds

Developer Equity(COMPANY RETAINED EARNINGS) **\$8,407,357**

Loans

Permanent Financing \$12,386,810
Construction Financing \$17,000,000

TOTAL SOURCES OF FUNDS \$37,794,167

USES

Land Acquisition (present value of lease payments) \$12,386,810

Hard Costs

Hard Construction Costs \$18,625,683
Hard Cost Contingency \$350,000
Subtotal Hard Costs \$18,975,683

Furniture, Fixtures and Equipment (FFE) \$925,000

Soft Costs/Fees

Project Management \$250,000
Architect/Engineer \$390,000
Appraisal \$8,000
Soil Testing \$15,000
Legal/Accounting \$300,000
Insurance \$150,000
Title/Recording/Transfer \$10,000
Building Permit \$150,000
Construction Interest \$867,015
Marketing \$120,000
Real Estate Taxes \$700,000
Other & Franchise Fees \$2,374,759

Sub-total Soft Costs/Fees \$5,334,774

Soft Cost Contingency \$171,900

Total Soft Costs/Fees/FFE \$6,431,674

Total Project Costs \$37,794,167

EXHIBIT H-2
MBE/WBE BUDGET

[See attached]

4/7/08

Grossinger City Autoplex
1500 Dayton St., Chicago, IL

MBE/WBE Exhibit to the TIF RDA

Hard Construction Cost from RDA Master Budget	\$18,625,683.00	
Hard Cost Contingency	350,000.00	
TOTAL HARD COST	\$18,975,683.00	See Attachment A
Deduct exempt & proprietary trades	(\$4,218,755.00)	See Attachment B
MBE/WBE Basis	\$14,756,928.00	See Attachment C
MBE @ 24%	\$3,541,663.00	
WBE @ 4%	\$590,277.00	

GROSSINGER CITY AUTOPLEX

VBI JOB #2717

EXHIBIT A

DEVELOPMENT AGREEMENT MASTER BUDGET FROM TERM SHEET

Date: 4/7/08

ITEM	AMOUNT	REVISED TERM SHEET
Developer Equity	\$10,628,814.00	\$8,407,357.00
Permanent Financing	\$11,335,353.00	\$12,386,810.00
Construction Financing	\$17,000,000.00	\$17,000,000.00
TOTAL	\$38,964,167.00	\$37,794,167.00
Land Acquisition	\$12,386,810.00	\$12,386,810.00
Hard Construction Costs	\$18,625,683.00	\$18,625,683.00
Hard Cost Contingency	\$350,000.00	\$350,000.00
Furniture, Fixtures and Equipment	\$2,925,000.00	\$925,000.00
General Contractor	\$1,325,000.00	Included
Project Management	\$450,000.00	\$250,000.00
Architect/Engineer	\$390,000.00	\$390,000.00
Appraisal	\$8,000.00	\$8,000.00
Soil Testing	\$15,000.00	\$15,000.00
Legal/Accounting	\$285,000.00	\$300,000.00
Insurance	\$150,000.00	\$150,000.00
Title/Recording/Transfer	\$10,000.00	\$10,000.00
Building Permit	\$10,000.00	\$150,000.00
Construction Interest	\$867,015.00	\$867,015.00
Marketing	\$120,000.00	\$120,000.00
Real Estate Taxes	\$700,000.00	\$700,000.00
Other & Franchise Fees	\$2,174,759.00	\$2,374,759.00
Soft cost contingency	\$171,900.00	\$171,900.00
TOTAL	\$38,964,167.00	\$37,794,167.00

GROSSINGER CITY AUTOPLEX
1500 Dayton, Chicago, IL

Attachment B
COSTS PROPOSED TO BE EXEMPT
FROM MBE/WBE REQUIREMENTS

<u>ITEM/TRADE</u>	<u>DESCRIPTION</u>	<u>BUDGET AMOUNT</u>	<u>EXPLANATION</u>
Elevator/Escalator	New Elevators/ Service Existing Escalators.	\$232,000.00	No MBE/WBE Certified Vendors.
Portal Structure	Signature Design Element for Toyota.	\$91,600.00	Proprietary with Toyota, National Sales Agreement with Novum LLC.
Light Fixtures	Furnish Manufacturer's Design Standard.	\$300,000.00	Proprietary with Toyota. Weidenbach-Brown is distributor.
Structural Concrete Restoration	Design, Engineering Analysis, Repair, and Protection of Structural Concrete Components.	\$2,000,000.00	No MBE/WBE Certified Vendors.
Curtainwall	Structural Architectural Glass Systems	\$693,255.00	Proprietary system & Manufacturer
Fire Protection	Fire Protection System	\$901,900.00	Only one (1) certified MBE/WBE contractor declined to bid.

**GROSSINGER CITY AUTOPLEX
1500 NORTH DAYTON
CHICAGO, IL 60622
ATTACHMENT C
MBE/WBE EXHIBIT**

4/7/2008

TRADE/ITEM	COST
Professional Services	\$ 110,000
Demolition	\$ 371,250
Excavation / Fill	\$ 40,000
Landscaping	\$ 203,000
Concrete	\$ 211,000
Masonry	\$ 750,300
Structural Steel	\$ 438,915
Misc Steel	\$ 170,228
Rough Carpentry	\$ 192,000
Architectural Millwork	\$ 225,410
Roofing / Sheet Metal	\$ 187,740
Metal Panels	\$ 463,708
Furnish Stone Panels	\$ 340,743
Install Stone Panels	\$ 166,875
Metal Doors, Frames, Hardware	\$ 133,740
Wood Doors	\$ 45,925
Aluminum Doors and Frames	\$ 59,630
Overhead Doors	\$ 166,995
Drywall/Framing	\$ 1,000,000
Acoustical Ceiling / Wood Ceiling	\$ 290,875
Ceramic Tile / Quarry Tile	\$ 911,026
Atheletic Flooring	\$ 23,560
Resilient Flooring and Base	\$ 143,224
Painting & Wallcovering	\$ 502,800
Toilet Partitions & Accessories	\$ 17,618
Plumbing	\$ 546,757
HVAC	\$ 1,890,796
Electrical	\$ 2,568,068
Cut/Patch MEP	\$ 70,000
Concrete Sawcutting	\$ 70,000
Spoil Removal	\$ 40,000
Traffic Gates	\$ 20,000
Site Furnishings	\$ 20,000
Structural Infills	\$ 50,000
Wire Mesh Partitions	\$ 10,000
Patch Fireproofing	\$ 15,000
Caulking	\$ 10,000
Floor Prep	\$ 50,000
Special Floor Coatings	\$ 80,000
Clean and Paint Parking Area Ceilings	\$ 220,000
Louvers and Vents	\$ 25,000
Signage and Graphics	\$ 25,000
Appliances	\$ 5,000
Bird Barrier	\$ 5,000
Knox Box	\$ 1,000
Security System	\$ 75,000
Communications System	\$ 30,000
Pneumatic Tube System	\$ 50,000
SUBTOTAL	\$ 13,043,183
CONTINGENCY (3%)	\$ 350,000
SUBTOTAL	\$ 13,393,183
GENERAL LIABILITY INSURANCE (1%)	\$ 133,932
SUBTOTAL	\$ 13,527,115
GENERAL CONDITIONS	\$ 800,000
SUBTOTAL	\$ 14,327,115
OVERHEAD AND FEE (3%)	\$ 429,813
TOTAL	\$ 14,756,928

EXHIBIT I

APPROVED PRIOR EXPENDITURES

No prior expenditures have been approved as of the Closing Date. However, in accordance with **Section 4.05** hereof, those expenditures made by the Developer with respect to the Project prior to the Closing Date and evidenced by documentation satisfactory to DPD still may be approved by DPD, in its sole discretion, as Prior Expenditures after the Closing Date.

EXHIBIT J

OPINION OF DEVELOPER'S COUNSEL

[See attached]

_____, 2008

City of Chicago
121 North LaSalle Street
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as special counsel to Grossinger City Autocorp, Inc., an Illinois corporation (“**Autocorp**”), and North Dayton Holdings, Inc., an Illinois corporation (“**Developer**”), in connection with the sublease of certain land and the renovation of the improvements located thereon in the Weed/Fremont Redevelopment Project Area (“**Project**”). Autocorp and Developer are hereinafter sometimes collectively referred to as the “**Grossinger Parties**”. The Grossinger Parties have been represented by the Law Offices of Samuel VP Banks in connection with the TIF Ordinances (as defined in the Redevelopment Agreement described below) passed by the City of Chicago (“**City**”) for the Project and the closing under the Redevelopment Agreement.

In our capacity as special counsel for the Grossinger Parties, we have examined original or certified, conformed or photostatic copies of (a) (i) the Articles of Incorporation, as amended to date, and Bylaws, as amended to date, for each of the Grossinger Parties, (ii) certificates of good standing issued by the Secretary of State of Illinois with respect to each Party, and (iii) records of corporate proceedings relating to each Party [(i), (ii) and (iii) above are hereinafter collectively referred to as (“**Organizational Documents**”)], and (b) such other documents and certificates which we have deemed necessary for purposes of issuing the opinions expressed herein.

As such special counsel, we have examined originals or copies certified or otherwise identified as true copies of the following agreements, instruments and documents (collectively, “**TIF Documents**”):

(a) Grossinger City Autocorp, Inc. Redevelopment Agreement of even date herewith made by and between Autocorp and the City (“**Redevelopment Agreement**”);

(b) Assignment and Assumption of Redevelopment Agreement of even date herewith made by and between Autocorp, as assignor, and Developer, as assignee (“**Assignment**”);

(c) Escrow Agreement dated July 1, 2008 executed by Developer and Valenti Builders, as the general contractor for the Project, and accepted by First American Title Insurance Company, as escrowee (“**Escrow Agreement**”).

City of Chicago
_____, 2008

Page 2

In rendering our opinions, we have assumed (a) the genuineness of all signatures, (b) the authenticity of documents submitted to us as originals, (c) the conformity to the originals of all documents submitted to us as certified, conformed, photostatic or facsimile copies, and (d) the accuracy and completeness of all documents submitted to us. As to various factual matters material to these opinions, we have relied on the representations and warranties of the Grossinger Parties in the TIF Documents.

In rendering our opinions, we have further assumed (a) each party to a TIF Document (other than a Party) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) each party to a TIF Document (other than a Party) has the requisite power and authority to authorize, execute and deliver, and to perform its obligations under the TIF Document to which it is a party and has duly authorized, executed and delivered such TIF Document, (c) each signatory to a TIF Document (other than a Party), has the requisite authority to authorize and execute the TIF Document to which it is a signatory and has duly authorized and executed each such TIF Document, (d) each natural person signing a TIF Document has sufficient legal capacity to do so, and (e) each of the TIF Documents constitutes the legal, valid and binding obligation of each party thereto (other than a Party), enforceable against such party in accordance with its terms.

Based on the foregoing, and subject to the qualifications and limitations set forth herein, it is our opinion that:

1. Based solely on the Organizational Documents, Autocorp is a corporation, formed, validly existing and in good standing under the laws of the State of Illinois.

2. Based solely on the Organizational Documents, Developer is a corporation, formed, validly existing and in good standing under the laws of the State of Illinois.

3. Autocorp has the corporate power and authority to execute and deliver the TIF Documents to which it is a party and to perform its obligations thereunder. The execution, delivery and performance of the TIF Documents to which Autocorp is a party do not violate Autocorp's Organizational Documents, and, to our knowledge, do not (i) violate any Illinois constitution, statute, regulation, rule, order or law known to us to which Autocorp is subject, (ii) constitute a breach or default under any material written agreements known to us to which Autocorp is a party or by which Autocorp or the Project is bound, or (iii) violate any judicial or administrative decree, writ, judgment or order issued by any court or governmental authority of the State of Illinois known to us to which Autocorp is subject.

4. Developer has the corporate power and authority to execute and deliver the TIF Documents to which it is a party and to perform its obligations thereunder. The execution, delivery and performance of the TIF Documents to which Developer is a party do not violate Developer's Organizational Documents, and, to our knowledge, do not (i) violate any Illinois

City of Chicago
_____, 2008
Page 3

constitution, statute, regulation, rule, order or law known to us to which Developer is subject, (ii) constitute a breach or default under any material written agreements known to us to which Developer is a party or by which Developer is bound, or (iii) violate any judicial or administrative decree, writ, judgment or order issued by any court or governmental authority of the State of Illinois known to us to which Developer is subject.

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

6. Each of the TIF Documents to which Autocorp or Developer is a party constitutes the legal, valid and binding obligations of such party, enforceable against such party in accordance with its terms.

7. To our knowledge, except (i) as disclosed on the search reports issued by CT Corporation as CT Order No. 7265074 SO, dated June 11, 2008, (ii) matters disclosed by the Grossinger Parties to the City, and (iii) matters which would not be reasonably expected to have a material adverse effect on Developer's business, (a) there is not now pending any litigation or governmental proceeding against Developer which would have a material adverse effect on Developer's performance under the Redevelopment Agreement, (b) Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority having jurisdiction over Developer, known to us and binding on Developer, and (c) Developer is not in default under any law, order, or regulation of any governmental agency or instrumentality having jurisdiction over Developer.

8. No consents, approvals, authorizations or other actions by, or filings with, any governmental authority of the United States or the State of Illinois are required for (a) the Grossinger Parties execution and delivery of the Assignment or Developer's execution and delivery of the Escrow Agreement, or (b) the Grossinger Parties' or Developer's, as applicable, performance of its obligations under the Assignment and the Escrow Agreement.

9. **Exhibit A** attached hereto (a) identifies each class of capital stock of Autocorp, (b) sets forth the number of issued and authorized shares of each such class, and (c) to our knowledge, identifies the record owners of shares of each class of capital stock of Autocorp and the number of shares held of record by each such holder. To our knowledge, except as set forth on **Exhibit A**, there are no outstanding warrants, options or other rights to purchase any authorized but unissued shares of the capital stock of Autocorp.

10. **Exhibit B** attached hereto (a) identifies each class of capital stock of Developer, (b) sets forth the number of issued and authorized shares of each such class, and (c) to our knowledge, identifies the record owners of shares of each class of capital stock of Developer and the number of shares held of record by each such holder. To our knowledge, except as set forth

on **Exhibit B**, there are no warrants, options or other rights to purchase any authorized but unissued shares of capital stock of Developer.

The opinions expressed above are subject to the following assumptions, exceptions and qualifications:

A. For purposes of these opinions, we have assumed without any independent investigation that the Redevelopment Agreement and the Assignment will have been properly recorded and indexed in the Recorder's Office and all necessary recording fees will have been paid concurrently with all such recordings.

B. The opinions expressed above are subject to (i) the effect of bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, rearrangement, liquidation, conservatorship, moratorium and other laws affecting the enforcement of creditors' rights or the collection of debtors' obligations generally, including without limitation, (a) the federal Bankruptcy Code (thus, including without limitation, matters of turnover, automatic stay, avoidance, fraudulent transfer, preference, discharge, conversion of a non-recourse obligation into a recourse claim and substantive consolidation, among others), and (b) all other applicable federal or state bankruptcy, insolvency, reorganization, receivership, moratorium and assignment for the benefit of creditors laws, including state fraudulent transfer laws and fraudulent conveyance laws, (ii) generally applicable to principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law), including without limitation (a) principles governing the availability of specific performance, injunctive relief or other traditional equitable remedies, which generally place the award of such remedies, subject to certain guidelines, in the discretion of the court to which application for such relief is made, (b) principles affording traditional equitable defenses (e.g., waiver, laches and estoppel) as applied to a party seeking enforcement, (c) any requirement of good faith dealing in the performance and enforcement of an agreement on the part of a party seeking enforcement after the agreement has been entered into, (d) any applicable principles of equity pertaining to the reasonableness of the enforcing party's conduct or of enforcing a particular term, after the agreement has been entered into, in light of the circumstances existing at the time of such conduct or attempted enforcement, (e) any applicable principles of equity pertaining to the materiality of a party's breach, (f) any applicable principles of equity pertaining to impracticability or impossibility of performance at the time of attempted enforcement, (g) any applicable principles of equity pertaining to unconscionability, as applied to the enforcing party's conduct after the agreement is entered into and at or before the time of attempted enforcement, and (iii) standards of commercial reasonableness and good faith and principles of public policy, which standards and principles, subject to the other exceptions set forth herein, may delay but would not, in our opinion, preclude the practical realization against a Party of the principal benefits intended to be conferred to the City by the Redevelopment Agreement.

C. We express no opinion with respect to (i) the enforceability of provisions in the Redevelopment Agreement relating to delay or omission of enforcement of rights or remedies, enforcement of forum selection provisions, waivers of defenses, waivers of jury trials or waivers of benefits of appraisalment, valuation, stay, extension, moratorium, redemption, statutes of limitation or other waivers of rights or benefits bestowed by operation of law, (ii) the right of any person or entity to institute or maintain any action in any court or upon matters respecting the jurisdiction of any court, (iii) any provision in the Redevelopment Agreement imposing indemnity liability on a Party for acts or omissions of the City or any third party, (iv) the award and amount of expenses, including attorneys' fees, which are subject to the discretion of the court before which any proceedings may be brought (further, we wish to bring to your attention that, to the extent that provisions of the Redevelopment Agreement provide for the payment of attorneys' fees and expenses in litigation, under applicable law of the State of Illinois, such attorneys' fees and expenses may be granted only to the prevailing party, notwithstanding that such provisions, by their express terms, purport to benefit a party under any circumstances), and (v) any provisions of the Redevelopment Agreement that purport to appoint the City as attorney-in-fact for a Party.

D. We understand that with respect to title matters, the City will be relying on the commitment for title insurance and the title insurance policy issued or to be issued to the City as to the Project. We have not made any investigation of, and do not express any opinions as to, any matters of title to any property (whether real, personal or mixed).

E. Whenever a statement or opinion herein is qualified by "to our knowledge", "known to us" or a similar phrase, it means that such statement or opinion is based solely on the current actual knowledge of the attorneys in this firm who have worked on the transactions contemplated by TIF Documents, without independent inquiry or investigation as to the accuracy or completeness of such statement or opinion. No inference as to our knowledge of the existence or absence of information, facts or circumstances should be drawn from the fact of our representation of a Party or any affiliate thereof on these or any other matters.

F. We have assumed that the transactions contemplated by the Redevelopment Agreement have been consummated and closed.

G. The opinions expressed herein are limited to the laws of the State of Illinois and we express no opinion as to any other law.

H. Our opinions in paragraphs 9 and 10 above as to the issued and outstanding capital stock of Autocorp and Developer, respectively, and the record owners thereof, is based solely on our review of the Organizational Documents.

City of Chicago

_____, 2008

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These opinions are limited to the matters stated herein. We disavow any obligation to update these opinions or advise any person or entity relying on them of any changes in our opinions in the event of changes in applicable law or facts or if additional or newly discovered information is brought to our attention. No opinion may be inferred or implied beyond the matters expressly stated herein.

These opinions are rendered to and for the benefit of the City in the context of the Project. Without our prior written consent, these opinions may not be relied upon by any other person or entity or in any other context, quoted in whole or in part or otherwise referred to in any other report or document, or furnished to any other person or entity except in connection with the enforcement of rights of the City related to the Redevelopment Agreement or in response to a subpoena or other valid legal process.

Very truly yours,

NEAL, GERBER & EISENBERG LLP

Exhibit A

GROSSINGER CITY AUTOCORP, INC.,
an Illinois corporation

CAPITAL STOCK

Class of Capital Stock	Number of Shares Authorized	Number of Shares Issued	Shareholder
Voting / Common	10,000	6,000	Grossinger Autocorp, Inc.
Non-Voting/ Common	10,000	0	

Exhibit B

NORTH DAYTON HOLDINGS, INC.,
an Illinois corporation

CAPITAL STOCK

Class of Capital Stock	Number of Shares Authorized	Number of Shares Issued	Shareholder
Common	1,000	100	Grossinger Autocorp, Inc.

EXHIBIT K
PRELIMINARY TIF PROJECTION -- REAL ESTATE TAXES
[See attached]

**EXHIBIT K
PRELIMINARY TIF PROJECTIONS**

Increment Analysis					
Collection Year (1)	Gross R.E. Tax (2)	Frozen R.E. Tax (3)	Gross Increment (4)	Pct. of Increment Used	Net TIF Funds Available
2008	\$163,717	\$163,717	\$0	92.50%	\$0
2009	\$163,717	\$163,717	\$0	92.50%	\$0
2010	\$1,035,281	\$163,717	\$871,564	92.50%	\$806,197
2011	\$1,411,433	\$163,717	\$1,247,717	92.50%	\$1,154,138
2012	\$1,443,191	\$163,717	\$1,279,474	92.50%	\$1,183,513
2013	\$1,475,662	\$163,717	\$1,311,946	92.50%	\$1,213,550
2014	\$1,508,865	\$163,717	\$1,345,148	92.50%	\$1,244,262
2015	\$1,542,814	\$163,717	\$1,379,097	92.50%	\$1,275,665
2016	\$1,577,528	\$163,717	\$1,413,811	92.50%	\$1,307,775
2017	\$1,613,022	\$163,717	\$1,449,305	92.50%	\$1,340,607
2018	\$1,649,315	\$163,717	\$1,485,598	92.50%	\$1,374,178
2019	\$1,686,425	\$163,717	\$1,522,708	92.50%	\$1,408,505
2020	\$1,724,369	\$163,717	\$1,560,652	92.50%	\$1,443,603
2021	\$1,763,167	\$163,717	\$1,599,451	92.50%	\$1,479,492
2022	\$1,802,839	\$163,717	\$1,639,122	92.50%	\$1,516,188
2023	\$1,843,403	\$163,717	\$1,679,686	92.50%	\$1,553,709
2024	\$1,884,879	\$163,717	\$1,721,162	92.50%	\$1,592,075
2025	\$1,927,289	\$163,717	\$1,763,572	92.50%	\$1,631,304
2026	\$1,970,653	\$163,717	\$1,806,936	92.50%	\$1,671,416
2027	\$2,014,993	\$163,717	\$1,851,276	92.50%	\$1,712,430
2028	\$2,060,330	\$163,717	\$1,896,613	92.50%	\$1,754,367
2029	\$2,106,687	\$163,717	\$1,942,970	92.50%	\$1,797,248
2030	\$2,154,088	\$163,717	\$1,990,371	92.50%	\$1,841,093
2031	\$2,202,555	\$163,717	\$2,038,838	92.50%	\$1,885,925

Prepared by
Louik/Schneider
from data
provided by
developer

Present Value of Increment \$10,108,327

Total Increment Collection \$32,187,240

Present Value Assumptions	
Annual Real Estate Tax Inflation Rate	2.25%
Discount Rate	7.50%

(1) 2031 last collection year for TIF

(2) Values are based on certified base EAV of the development project

(3) Amortization over 1.25 years

Grossinger City Autocorp, Inc.

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

EXHIBIT M

FORM OF NOTE

REGISTERED
NO. R-1

MAXIMUM AMOUNT
\$8,500,000

**UNITED STATES OF AMERICA
STATE OF ILLINOIS
COUNTY OF COOK
CITY OF CHICAGO**

**TAX INCREMENT ALLOCATION REVENUE NOTE (GROSSINGER CITY AUTOCORP
REDEVELOPMENT PROJECT), TAXABLE SERIES 2008**

Registered Owner: Grossinger City Autocorp, Inc.

Interest Rate: ___ per annum

Maturity Date: _____, 202__ [twenty 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 \$8,500,000 and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. Accrued but unpaid interest on this Note shall also accrue at the interest rate per year specified above until paid. Principal of and interest on this Note from the Available Incremental Taxes (as defined in the hereinafter defined Redevelopment Agreement) is due March 1 of each year until the earlier of Maturity or until this Note is paid in full. Payments shall first be applied to interest. The principal of and interest on this Note are payable in lawful money of the United States of America, and shall be made to the

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

This Note is issued by the City in the principal amount of advances made from time to time by the Registered Owner up to \$8,500,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by Grossinger City Autocorp, Inc. (the "Project"), which were acquired, constructed and installed in connection with the development of an approximately 300,000 square foot building in the Weed/Fremont Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act") , the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on January 9, 2008 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement

for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and conditions under which this Note is issued and secured. **THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND IS PAYABLE SOLELY FROM AVAILABLE INCREMENTAL TAXES, AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCES. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OR INTEREST OF THIS NOTE.**

The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

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

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same

maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

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

Pursuant to the Redevelopment Agreement dated as of _____, ____ between the City and the Registered Owner (the "Redevelopment Agreement"), the Registered Owner has agreed to lease and construct the Project and to advance funds for the rehabilitation of certain facilities related to the Project on behalf of the City. The cost of such lease 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 and/or terminate payments of principal and of interest on this Note upon the occurrence of certain conditions. The City shall not be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. 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.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the City Clerk of the City, all as of _____,2008.

Mayor

(SEAL)
Attest:

City Clerk

**CERTIFICATE
OF
AUTHENTICATION**

Registrar
and Paying Agent
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 (Grossinger City Autocorp Redevelopment Project), Taxable Series 2008, 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: _____

CERTIFICATION OF EXPENDITURE

(Closing Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")
\$8,500,000 Tax Increment Allocation Revenue Note
(Grossinger City Autocorp Redevelopment Project, Taxable Series 2008)
(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 May 14, 2008 (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

EXHIBIT N

PUBLIC BENEFITS PROGRAM

In order to meet the requirements for the Public Benefits Program required in Section 8.20, Developer must perform the following:

1. Meet the job creation requirements set forth in Section 8.06;
2. Work with the Mayor's Office of Workforce Development in recruiting for the jobs required to be created pursuant to Section 8.06; and
3. Meet the requirements for a Green Roof and LEED Certification required in Section 11.03.

EXHIBIT O

FORM OF SUBORDINATION AGREEMENT

This document prepared by and after recording return to:
Keith A. May, Esq.
Assistant Corporation Counsel
Department of Law
121 North LaSalle Street, Room 600
Chicago, IL 60602

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"), [Name Lender], a [national banking association] (the "Lender").

WITNESSETH:

WHEREAS, the _____ an Illinois limited liability company (the "Developer"), has leased certain property located within the Weed/Fremont Redevelopment Project Area at 1500 North Dayton Street, Chicago, Illinois 606__ and legally described on Exhibit A hereto (the "Property"), in order to redevelop the building (the "Building") located on the Property; and

WHEREAS, as part of obtaining financing for the Project, the Developer has entered into a certain Construction Loan Agreement dated as of _____, 200__ 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 _____, 200__ and recorded _____, 200__ as document number _____ made by the Borrower to the Lender; and (ii) Assignment of Leases and Rents recorded _____, 200__ 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, 8.06 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 or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

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

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

ACKNOWLEDGED AND AGREED TO THIS
___ DAY OF _____, ____

[Developer], a _____

By: _____

Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a notary public in and for the County and 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, Illinois (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 as such _____ Commissioner, (s)he signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

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

Notary Public

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____, personally known to me to be the _____ 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)

EXHIBIT A - LEGAL DESCRIPTION

EXHIBIT P
FORM OF PAYMENT BOND
[Not applicable]