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Execution Draft 6 June 2013

**PULLMAN PARK DEVELOPMENT, LLC AND
CHICAGO NEIGHBORHOOD INITIATIVES, INC.
REDEVELOPMENT PROJECT**

TAX INCREMENT ALLOCATION REDEVELOPMENT ACT

**NORTH PULLMAN
REDEVELOPMENT PROJECT AREA**

**PULLMAN PARK DEVELOPMENT, LLC AND
CHICAGO NEIGHBORHOOD INITIATIVES, INC.
REDEVELOPMENT AGREEMENT**

DATED AS OF June 7, 2013

BY AND BETWEEN

THE CITY OF CHICAGO

AND, JOINTLY AND SEVERALLY,

PULLMAN PARK DEVELOPMENT, LLC,
an Illinois limited liability company

AND

ITS MANAGING MEMBER: CHICAGO NEIGHBORHOOD
INITIATIVES, INC., an Illinois not-for-profit company

**NORTH PULLMAN
REDEVELOPMENT PROJECT AREA**

**PULLMAN PARK DEVELOPMENT, LLC AND
CHICAGO NEIGHBORHOOD INITIATIVES, INC.
REDEVELOPMENT AGREEMENT
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**NORTH PULLMAN
REDEVELOPMENT PROJECT AREA**

**PULLMAN PARK DEVELOPMENT, LLC AND
CHICAGO NEIGHBORHOOD INITIATIVES, INC.
REDEVELOPMENT AGREEMENT
LIST OF SCHEDULES AND EXHIBITS**

Schedules

Schedule A	Definitions
Schedule B	Insurance Requirements

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

Exhibits

Exhibit A	*Redevelopment Area Legal Description
Exhibit B-1	*Legal Description of the Property
Exhibit B-2	*Site Plan for the Project
Exhibit B-3	Planned Development No. 1167
Exhibit B-4	List of PINS Used to Calculate Available Incremental Taxes
Exhibit C	Redevelopment Plan
Exhibit D-1	*Project Budget
Exhibit D-2	*Construction (MBE/WBE) Budget
Exhibit E	*Schedule of TIF-Funded Improvements
Exhibit F-1	Form of Escrow Agreement
Exhibit F-2	Form of Reserve Escrow Agreement
Exhibit G	Construction Contract
Exhibit H	Approved Prior Expenditures
Exhibit I	Permitted Liens
Exhibit J	Form of Opinion of Developer's Counsel
Exhibit K	Form of Junior Mortgage
Exhibit L	Form of Payment and Performance Bond
Exhibit M-1	Form of City Note A and Related Certificate of Expenditure
Exhibit M-2	Form of City Note B and Related Certificate of Expenditure
Exhibit N	City Funds Requisition Form
Exhibit O	Form of City Subordination Agreement

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REDEVELOPMENT PROJECT AREA**

**PULLMAN PARK DEVELOPMENT, LLC AND
CHICAGO NEIGHBORHOOD INITIATIVES, INC.
REDEVELOPMENT AGREEMENT**

This Pullman Park Development, LLC and Chicago Neighborhood Initiatives, Inc. Redevelopment Agreement (the "**Agreement**") is made as of this 7th day of June, 2013, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Housing and Economic Development ("**HED**"), and Pullman Park Development, LLC, an Illinois limited liability company ("**Pullman Park Development**") and its managing member: Chicago Neighborhood Initiatives, Inc., an Illinois not-for-profit company ("**Chicago Neighborhood Initiatives**") jointly and severally as to all rights and liabilities under this Agreement. For purposes of this Agreement, Pullman Park Development and Chicago Neighborhood Initiatives are defined, jointly and severally, as "**Developer**".

RECITALS:

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

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

to-time (the “Act”), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

C. **City Council Authority:** To induce redevelopment under the provisions of the Act, the City Council of the City (the “City Council”) adopted the following ordinances on June 30, 2009: (1) ”An Ordinance of the City of Chicago, Illinois Approving a Tax Increment Redevelopment Plan for the North Pullman Redevelopment Project Area” (the “**Plan Adoption Ordinance**”); (2) ”An Ordinance of the City of Chicago, Illinois Designating The North Pullman 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 North Pullman Redevelopment Project Area” (the “**TIF Adoption Ordinance**”). Collectively the three ordinances are defined as the “**TIF Ordinances**”. The redevelopment project area (the “**Redevelopment Area**”) is legally described in Exhibit A.

D. **The Project:** Pullman Park Development has purchased (the “**Acquisition**”) certain property located within the Redevelopment Area in the vicinity of 111th Street and Doty Avenue, as legally described on Exhibit B-1 (the “**Property**”), and, within the time frames set forth in Section 3.01, shall commence and complete construction of approximately 67,000 square feet of in-line, small shop and mid-box retail space, including the following components (collectively, the “**Phase 1b New Work**”): (a) site preparation (demolition, utilities, dynamic compaction and grading), environmental remediation, parking lot improvements and landscaping; (b) vertical construction of approximately 67,000 square feet of in-line retail space; and (c) construction of a CTA bus stop and access that will allow for bus service to be provided to the new retail development, all in conformity with the Plans and Specifications. A site plan for the Phase 1b New Work is contained in Exhibit B-2. In connection therewith, Developer has already completed the following public infrastructure improvements (collectively, the “**Phase 1b Completed Work**”): (i) rebuilding Woodlawn/Doty Avenue from 103rd Street to 107th Street and (ii) constructing intersection improvements at 103rd and Woodlawn. The Phase 1b New Work and the Phase 1b Completed Work are defined in this Agreement as the “**Phase 1b Retail Project**”. The Phase 1b Completed Work was funded by a State of Illinois grant administered by the Illinois Department of Commerce and Economic Opportunity (the “**DCEO Grant**”). As a precursor to the Phase 1b Completed Work, Developer has completed other infrastructure improvements – the construction and extension of Doty Avenue from 107th Street to 111th Street, intersection improvements at 111th Street and Doty Avenue, interchange ramp improvements at 111th Street and the Bishop Ford Freeway and the construction of two detention ponds to manage stormwater for the Phase 1b Retail Project (the “**Phase 1a Infrastructure Improvements**”) – and incurred costs in connection therewith. The Acquisition and the construction of the Phase 1b Retail Project and the Phase 1a Infrastructure Improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit E) are collectively defined as the “**Project**.” The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. Redevelopment Plan and Planned Development: The Project will be carried out in accordance with: (i) this Agreement, (ii) the City of Chicago North Pullman Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project attached as Exhibit C, as in effect on the date of this Agreement (the “**Redevelopment Plan**”), and (iii) Planned Development No. 1167 approved by the City Council on June 30, 2010, a copy of which is attached as Exhibit B-3, as further amended or administratively adjusted by the City following the date hereof (“**PD 1167**”), unless and until PD 1167 is sunsetted by the City.

F. City Financing and Assistance: Subject to Developer fulfilling those obligations under this Agreement that are the applicable conditions precedent to obligate the City to do so, the City will: (i) make a total of \$6.1 million in cash payments to Developer on the Closing Date, to reimburse Developer for a portion of the costs of the Phase 1a Infrastructure Improvements, which have already been incurred and paid, consisting of costs for public improvements under the Act; (ii) issue to Chicago Neighborhoods Initiatives, tax-exempt City Note A in an amount that will provide for City Note A Net Proceeds (after provisions for capitalized interest and debt service reserve fund.) of \$4,903,525; and (iii) if necessary, issue taxable City Note B in principal amount equal to the difference, if any, between \$4,903,525 and the City Note A Net Proceeds.

In addition, the City may, in its discretion, issue tax increment allocation bonds (“**TIF Bonds**”) secured by Incremental Taxes (as defined below) as provided in a TIF bond ordinance (the “**TIF Bond Ordinance**”), at a later date as described and conditioned in Section 4.09. The proceeds of the TIF Bonds (the “**TIF Bond Proceeds**”) may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Incremental Taxes, or in order to reimburse the City for the costs of TIF-Funded Improvements.

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

AGREEMENT:

ARTICLE ONE: INCORPORATION OF RECITALS

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

ARTICLE TWO: DEFINITIONS

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

ARTICLE THREE: THE PROJECT

3.01 **The Project.** (a) Developer has completed the Phase 1a Infrastructure Improvements and the Phase 1b Completed Work. (b) Developer will: (i) begin redevelopment construction of the Phase 1b New Work no later than July 1, 2013, and (ii) complete redevelopment construction of the Phase 1b New Work no later than October 31, 2014, subject to: (x) Section 18.17 (Force Majeure); (y) applicable Change Orders, if any, issued under Section 3.04; and (z) the receipt of all applicable permits and Project approvals.

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

3.03 **Project Budget.** Developer has furnished to HED, and HED has approved, a Project Budget which is Exhibit D-1, showing total costs for the Project in an amount estimated to be \$45,827,622 which includes anticipated costs for the Phase 1b New Work of (\$19,003,525) (the "**Phase 1b New Work Budget**"). Developer hereby certifies to the City that: (a) it has Lender Financing and/or Equity in an aggregate amount which, together with the City Funds, is sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. Developer will promptly deliver to HED copies of any Change Orders with respect to the Project Budget as provided in Section 3.04.

3.04 **Change Orders.**

(a) Except as provided in subparagraph (b) below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to changes to the Project must be submitted by Developer to HED concurrently with the progress reports described in Section 3.07; provided, however, that any Change Orders relating to any of the following must be submitted by Developer to HED for HED's prior written approval: (i) a reduction by more than five percent (5%) in the square footage of the Project from the square footage approved by HED under Section 3.02, or (ii) a change in the primary use of the Phase 1b New Work, or (iii) a delay in the commencement date or the completion date of the Phase 1b New Work of more than six (6) months, provided Developer notifies HED in writing and the reason therefor, or (iv) change orders resulting in an aggregate increase to the Project Budget of 10% or more. Developer will not authorize or permit the performance of any work relating to any Change Order requiring HED's prior written approval or the furnishing of materials in connection therewith prior to the receipt by Developer of HED's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor,

will contain a provision to this effect or for compliance with this Agreement generally. An approved Change Order will not be deemed to imply any obligation on the part of the City to increase the amount of City Funds or to provide any other additional assistance to Developer.

(b) Notwithstanding anything to the contrary in this Section 3.04, Change Orders other than those stated in subsection (a) above do not require HED's prior written approval as stated in this Section 3.04, but HED must be notified in writing of all such Change Orders within 10 Business Days after the execution of such change order, and Developer, in connection with such notice, must identify to HED the source of funding therefor in the progress reports described in Section 3.07.

3.05 **HED Approval.** Any approval granted by HED under this Agreement of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only, and any such approval does not affect or constitute any approval required by any other City department or under any City ordinance, code, regulation, or any other governmental approval, nor does any such approval by HED under this Agreement constitute approval of the utility, quality, structural soundness, safety, habitability, merchantability or investment quality of the Project. Developer will not make any verbal or written representation to anyone to the contrary. Developer shall not undertake construction of the Project unless Developer has obtained all necessary permits and approvals (including but not limited to HED's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required under this Agreement.

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

3.07 **Progress Reports and Survey Updates.** After the Closing Date, on or before the 15th day of each reporting month, Developer will provide HED with written quarterly construction progress reports detailing the status of the Phase 1b New Work, including a revised completion date, if necessary (with any delay in the commencement or completion date of more than six (6) months being considered a Change Order, requiring HED's written approval under Section 3.04). Developer must also deliver to the City written monthly progress reports detailing compliance with the requirements of Section 8.08 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment) (collectively, the "**City Requirements**"). If the reports reflect a shortfall in compliance with the requirements of Sections 8.08, 10.02 and 10.03, then there must also be included a written plan from Developer acceptable to HED to address and cure such shortfall.

3.08 **Inspecting Agent or Architect.** An independent agent or architect, (other than Developer's architect), shall be selected by Developer and approved by HED to act as the inspecting agent or architect for HED for the Phase 1b New Work, and any fees and expenses connected with its work or incurred by such independent agent or architect will be solely for Developer's account and will be promptly paid by Developer. The inspecting agent or architect

shall perform periodic inspections with respect to the Phase 1b New Work providing recommendations with respect thereto to HED, prior to requests for disbursement for costs related to the Phase 1b New Work.

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

3.10 **Signs and Public Relations.** If requested by HED, Developer will erect in a conspicuous location on the Property during construction of the Phase 1b New Work a sign of size and style approved by the City, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and any other pertinent information regarding Developer and the Project in the City's promotional literature and communications.

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

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

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

3.14 **Additional Project Features**

- (a) **Landscaping.** Developer will perform all landscaping work required by PD1167.
- (b) **Green Construction.** All construction of the Project, including but not limited to building construction, green space and surface parking, if any, shall be built in accordance with the "green construction" standards of applicable HED policies as incorporated in and required by PD 1167. Developer will submit written evidence demonstrating compliance with such requirements.

ARTICLE FOUR: FINANCING

4.01 Total Project Cost and Sources of Funds.

(a) The cost of the Project is estimated to be \$45,827,622 to be applied in the manner stated in the Project Budget. Such costs will be funded from the following sources when all anticipated Project financing has been completed:

A.	Lender Financing/Grant Financing	
	1. Existing New Markets	
	Tax Credit Loans	\$ 22,200,000
	2. DCEO Grant	4,624,097
	Total Lender/Grant Financing	\$ 26,854,097
B.	Developer Equity (subject to <u>Section 4.08</u>)	\$ 8,000,000
C.	City Funds (as defined below)	
	1. Cash Payment to Developer at Closing Date for deposit in the Construction Escrow	\$ 6,100,000(2)
	2. City Notes	
	a. City Note A Net Proceeds to Construction Escrow	\$ 4,903,525(1)(2)(3)
	b. City Note B at Note Sale Date for a shortfall in City Note A Proceeds	TBD(1).
	Total City Funds	\$ 11,003,525

NOTES:

(1) City Note A will be issued to Chicago Neighborhood Initiatives on the Note Sale Date. Chicago Neighborhood Initiatives anticipates selling City Note A to an investor group in a transaction on the Note Sale Date for a targeted City Note A Net Proceeds of not less than \$4,903,525. If there is a proceeds shortfall, then City Note B will be issued by the City in the shortfall amount, after City Note A has been sold. For informational purposes in this Agreement, City Note B has been assigned a “**bracketed**” nominal value of \$1,000,000, to be adjusted if and when City Note B is issued. City Note A will be a tax-exempt note and will have payment priority over City Note B. City Note B will be a taxable note. If issued, City Note B will be subject to the following limits as applicable: \$1,000,000; or the maximum amount that can be supported for City Note B as stated in the final underwriting of the increment as reported in the feasibility report issued for the sale of City Note A; or the difference between \$4,903,525 and the

City Note A Net Proceeds. Further, the face amount of City Note A plus the face amount of City Note B cannot exceed \$8,016,029.

(2) Construction Escrow. At Closing, Developer will enter into an escrow agreement with the, HED and the Title Company as provided in Section 4.04, creating the “**Construction Escrow**”. The \$6,100,000 cash payment to Developer on the Closing Date and the City Note A Net Proceeds will each be deposited into the Construction Escrow.

(3) Reserve Escrow and Capitalized Interest. Upon the sale of City Note A, the City and Developer will deposit or cause to be deposited 10% of the par amount of City Note A into an escrow account (the “**Reserve Escrow**”) held by a financial institution selected by the Developer and acceptable to the City (the “**Bank Trustee**”). The Reserve Escrow will be available to cure payment shortfalls in the event there are insufficient Available Incremental Taxes to make any scheduled payment for City Note A, as provided in Section 4.03(d). In addition, the City and Developer shall cause to be deposited from proceeds of City Note A an amount equal to the interest to accrue on City Note A through March 1, 2015 (the “**Capitalized Interest**”) in an account maintained with the Bank Trustee (the “**Capitalized Interest Account**”). Amounts on deposit in the Capitalized Interest Account shall be used to pay first interest coming due on City Note A.

(b) Completed Work. Developer has already incurred and paid for the costs of the Acquisition, the Phase 1a Infrastructure Improvements and the Phase 1b Completed Work using the Lender Financing sources scheduled above. The \$6,100,000 cash payment to Developer on the Closing Date is intended to reimburse Developer for a portion of the costs of the Phase 1a Infrastructure Improvements, consisting of costs for public improvements eligible for reimbursement under the Act. The City is willing to reimburse Developer for a portion of the costs of the Phase 1a Infrastructure Improvements. Developer is undertaking the obligations under this Agreement to construct the Phase 1b New Work and agrees that the \$6,100,000 cash payment will be used to pay for the costs of the Phase 1b New Work.

(c) New Work. The costs of the Phase 1b New Work are estimated to be \$19,003,525 to be paid for from the Equity and City Funds scheduled above.

4.02 Developer Funds. Equity, Lender Financing, and City Funds will be used to pay all Project costs, including, but not limited to Redevelopment Project Costs and costs of TIF-Funded Improvements. The \$6,100,000 cash payment to reimburse Developer for a portion of the costs of the Phase 1a Infrastructure Improvements may thereafter be used to pay for any costs of the Phase 1b New Work.

4.03 City Funds.

(a) Uses of City Funds.

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

(ii) City Funds may be used to pay for or reimburse Developer only for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit E states, by line item, the TIF-Funded Improvements for the Project contingent upon receipt by the City of documentation satisfactory in form and substance to HED evidencing such costs and their respective eligibility as a Redevelopment Project Cost. With the exception of the \$6,100,000 payment to be made as provided in Section 4/03(c) below, reimbursement to Developer of costs through City Funds will be in the form of cash payments to Developer from the Construction Escrow. Amounts on deposit in the Capitalized Interest Account may be expended by the Bank Trustee to pay interest owed on City Note A without any further direction from the City.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Article Five, the City hereby agrees to: (i) pay \$6,100,000 in cash to Developer on the Closing Date; and (ii) issue City Note A to Chicago Neighborhood Initiatives on the Note Sale Date; and (iii) issue City Note B to Chicago Neighborhood Initiatives on the Note Sale Date; in such amount which will allow for an aggregate net proceeds (after deducting proceeds or deposits to any required debt service reserve fund and capitalized interest) to Chicago Neighborhood Initiatives of \$4,903,525 on the Note Sale Date. Any payments under the City Notes are subject to the amount of Available Incremental Taxes and Incremental Taxes for the Redevelopment Area, as applicable, being sufficient for such payments.

(c) \$6.1 Million Payment. The City hereby agrees to port funds from one or more of the adjacent redevelopment project areas which are contiguous to or only separated by the public way from the North Pullman Redevelopment Area in a total amount of \$6,100,000. The City will pay such amount to Developer on the Closing Date. This payment shall be made as reimbursement to Developer for a portion of the costs of the Phase 1a Infrastructure Improvements already incurred by Developer. Developer may assign, transfer and quit-claim its right to receive all or a portion of such payment to Chicago Neighborhood Initiatives, and direct that the City pay such funds (or portion thereof) directly to Chicago Neighborhood Initiatives. Developer hereby agrees to deposit the \$6,100,000 payment, whether paid to Developer or Chicago Neighborhood Initiatives, into the Construction Escrow or to instruct the City to directly deposit the payment

into the Construction Escrow for Developer's account. Funds on deposit in the Construction Escrow will be used to pay for or reimburse Developer for the costs of TIF-Funded Improvements as provided in the Escrow Agreement. The Escrow Agreement shall provide that the \$6,100,000 payment shall be disbursed from the Construction Escrow to pay for costs of the Phase 1b New Work as such costs are incurred, subject only to Developer's certification of not less than \$6,100,000 of Phase 1a Infrastructure Improvements costs to the City and the City's approval of such costs.

(d) Issuance of City Note A. On the Note Sale Date, the City will issue City Note A to Chicago Neighborhood Initiatives with the following terms and conditions:

(i) Principal. Chicago Neighborhood Initiatives intends to sell City Note A in a transaction on the Note Sale Date at a purchase price equal to the principal amount of City Note A. Proceeds in the amount of the City Note A Net Proceeds, up to \$4,903,525 shall be deposited in the Construction Escrow, with any remaining City Note A Net Proceeds, if any, to be deposited in the Reserve Escrow or Capitalized Interest Account. The gross amount of City Note A is presently estimated to be \$6,750,000.

(ii) Interest. When issued, the interest rate for City Note A will be set as follows: On the date of issuance of City Note A, the interest rate will be equal to the 20 year BAA Uninsured G.O. Bond Index as published by Thompson-Reuters Municipal Market Data ("MMD") in effect on the date of issuance, plus a margin of 250 basis points (the "**City Note A Interest Rate**"), but in no event will such interest rate be greater than 8.5%. Interest on City Note A will compound annually.

(iii) Term. City Note A will be issued on the Note Sale Date and will have a maturity of 20 years after the Note Sale Date.

(iv) Payments of Principal and Interest.

(A) Interest on City Note A will begin to accrue at the date of issuance. Amortization of principal will be over the term of City Note A as provided in the debt service schedule attached to City Note A. Payments will be made annually on March 1st of each year, beginning in 2014.

(B) Except as may be otherwise provided in this Agreement, Available Incremental Taxes only will be used to pay the principal of and interest on City Note A and on unpaid interest, if any. In the ordinance authorizing the issuance of City Note A the City will establish an account denominated the: "Pullman Park Development/Chicago Neighborhood Initiatives Debt Service

Account” within the North Pullman Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the Pullman Park Development/Chicago Neighborhood Initiatives Debt Service Account.

- (C) Payments of principal and interest on City Note A and City Note B (if issued) will be made from Available Incremental Taxes deposited into the Pullman Park Development / Chicago Neighborhood Initiatives Debt Service Account as follows:
 - (I) First to interest due under City Note A;
 - (II) Next to scheduled principal payments on City Note A;
 - (III) Next to interest due under City Note B (if issued);
 - (IV) Next to payment of principal on City Note B (if issued);
- (D) After the principal and interest on City Note A and City Note B have been paid in full, and each City Note canceled according to its terms, then the Pullman Park Development/Chicago Neighborhood Initiatives Inc. Debt Service Account will be closed and all subsequent Available Incremental Taxes will be deposited by the City in the North Pullman Redevelopment Project Area Special Tax Allocation Fund.
- (v) Insufficient Available Incremental Taxes. If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any scheduled payment on City Note A, then: (1) the City will not be in default under this Agreement or City Note A, provided that, to the extent available, the City shall draw on the Reserve Escrow to make up any shortfall, and (2) due but unpaid scheduled payments (or portions thereof) on City Note A will be paid as provided in this Section 4.03 and, if necessary, the Reserve Escrow will be replenished, promptly as funds become available for their payment. Interest per annum at the rate set when the City Note A is issued will accrue on any principal or interest payments which are unpaid because of insufficient Available Incremental Taxes.
- (vi) Prepayment of the City Note A by the City and Related Lock Out Period. The City may prepay the City Note A in whole or in part at any time without premium or penalty, subject to the following conditions:

- (A) City Note A Lock-Out Period. The City will not prepay City Note A for a 5-year (60 month) period beginning with the first whole month after the date of issuance of City Note A, (the "**City Note A Lock-Out Period**"), unless the City Note A Lock-Out Period restriction is formally waived by the City Note A registered holder(s).
- (B) City May Prepay. Upon expiration or formal waiver of the City Note A Lock-Out Period, the City may prepay the then current balance of City Note A without any restrictions or conditions, together with any accrued interest.
- (vii) Sale or Transfer of the City Note A. After the issuance of the City Note A to Chicago Neighborhood Initiatives, City Note A, may be sold or assigned in a Qualified Transfer of City Note A.
- (viii) No Cessation of City Note A Payments. Notwithstanding anything to the contrary contained in this Agreement, after a Qualified Transfer of City Note A in compliance with Section 4.03(d)(vii) above, if an Event of Default occurs, the City will, notwithstanding such Event of Default, continue to make payments with respect to the City Note A.
- (ix) Costs of Issuance of City Note A. Developer will be responsible for paying all legal and issuance costs in relation to City Note A, including all costs of bond counsel.
- (e) Issuance of City Note B. In the event City Note A Net Proceeds to be deposited into the Construction Escrow are less than \$4,903,525 in the contemporaneous sale or transfer transaction anticipated by Developer for City Note A, then the City will issue City Note B to Chicago Neighborhood Initiatives on the Note Sale Date. If the City issues City Note B, such issuance will be subject to the following terms and conditions:
 - (i) Principal. The principal amount for City Note B will be the difference between the City Note A Net Proceeds to Developer and \$4,903,525. For informational purposes in this Agreement, City Note B has been assigned a "**bracketed**", nominal value of \$1,000,000, to be adjusted if and when City Note B is issued. If issued, City Note B will be subject to the following limits as applicable: (i) per value not to exceed \$1,000,000; (ii) the maximum amount that can be support for City Note B as stated in the final underwriting of the increment as reported in the feasibility report issued for the sale of City Note A; (iii) the difference between \$4,903,525 and the City Note A Net Proceeds; and (iv) the face

amount of City Note A plus the face amount of City Note B can not exceed \$8,016,029.

- (ii) Interest. If and when issued, the interest rate for City Note B will be set as follows: On the date of issuance of City Note B, the interest rate will be equal to the 20-year BBB Corporate bond index as published by Bloomberg in effect on the date of issuance, plus a margin of 200 basis points (the "**City Note B Interest Rate**"), but in no event will such interest rate be greater than 8.5%. Interest on City Note B will compound annually.
- (iii) Term. If issued, City Note B will be issued on or after the Note Sale Date and will have a term of up to 20 years.
- (iv) Payments of Principal and Interest.
 - (A) Interest on the City Note B will begin to accrue at the date of issuance. Amortization of principal will be over the term of up to 20 years as excess Available Incremental Taxes are generated on an annual basis. Payments of debt service will be made annually on March 1st commencing 2014.
 - (B) Except as may be otherwise provided in this Agreement, Available Incremental Taxes only will be used to pay the principal of and interest on City Note B and on unpaid interest, if any. In the ordinance authorizing the issuance of the City Note B, the City will establish an account denominated the: "Pullman Park Development/Chicago Neighborhood Initiatives Debt Service Account" within the North Pullman Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the "Pullman Park Development/Chicago Neighborhood Initiatives Debt Service Account."
 - (C) Payments of principal and interest on City Note B and City Note A will be made from Available Incremental Taxes deposited into the Pullman Park Development/Chicago Neighborhood Initiatives Debt Service Account as follows:
 - (I) First to interest due under City Note A;
 - (II) Next to scheduled principal payments on City Note A;
 - (III) Next to interest due under City Note B (if issued);
 - (IV) Next to payment of principal of City Note B (if issued).

- (D) After the principal and interest on City Note A Note and City Note B have been paid in full and each Note canceled according to its terms, then the Pullman Park Development/Chicago Neighborhood Initiatives Debt Service Account will be closed and all subsequent Available Incremental Taxes will be deposited by the City in the North Pullman Redevelopment Project Area Special Tax Allocation Fund.
- (v) Insufficient Available Incremental Taxes. If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any scheduled payment on City Note B, then: (1) the City will not be in default under this Agreement or City Note B, and (2) due but unpaid scheduled payments (or portions thereof) on City Note B will be paid as provided in this Section 4.03 as promptly as funds become available for their payment. Interest per annum at the rate set when City Note B is issued will accrue on any principal or interest payments which are unpaid because of insufficient Available Incremental Taxes.
- (vi) Prepayment. City Note B may be prepaid at any time without premium or penalty.
- (vii) Sale or Transfer of City Note B. After the issuance of the City Note B, City Note B may be sold or assigned in a Qualified Transfer of City Note B. Thereafter, City Note B may again be sold in a Qualified Transfer of City Note B.
- (viii) Cessation of City Note B Payments. If an Event of Default occurs, the City will have no further obligations to make any payments with respect to City Note B and the City will have the remedies stated in Sections 7.03 and 15.02.
- (ix) Costs of Issuance of City Note B Developer will be responsible for paying for all legal and issuance costs in relations to City Note B, including all costs of bond counsel, if any.

4.04 Construction Escrow; City Funds Requisition Form; Reserve Escrow.

(a) The City, Developer, and the Title Company shall enter into the Escrow Agreement, substantially in the form of Exhibit F-1 creating the Construction Escrow. The Construction Escrow will include a “**Developer’s Subaccount**” and a “**City Note Proceeds Subaccount**”. Equity not expended as of the date of this Agreement shall be deposited into the Developer’s Subaccount or the existing escrow referenced in the Escrow Agreement which is Exhibit F-1. Developer shall deposit the City Note A Net Proceeds into the City Note Proceeds Subaccount. Funds on deposit in the Developer’s Subaccount and such existing escrow may be

disbursed to pay for the costs of the Phase 1b New Work. Funds on deposit in the City Note Proceeds Subaccount will be used to pay for or reimburse Developer for the costs of TIF-Funded Improvements associated with the Phase 1b New Work. Disbursements of funds from the City Note Proceeds Subaccount shall be made through the funding of draw requests upon the approval of a City Funds Requisition Form (Exhibit N) submitted by Developer under the terms of the Escrow Agreement and this Agreement. In the event of any conflict between the terms of this Agreement and the terms of the Escrow Agreement concerning the Project (including the dispersal of funds for the Phase 1b New Work through the Escrow), the terms of this Agreement shall control.

(b) The City shall enter into the Reserve Escrow with a financial institution selected by Developer and acceptable to the City under which there shall be created two separate accounts: A Debt Service Reserve Fund and a Capitalized Interest Fund (each as defined in such agreement). There shall be deposited into the Debt Service Reserve Fund proceeds from the sale of City Note A in an amount necessary to fund any required reserve for City Note A in an amount not in excess of 10% of the principal amount of City Note A. There shall be deposited into the Capitalized Interest Fund an amount equal to the Capitalized Interest. Amounts on deposit in the Reserve Escrow shall be available to pay debt service owed on City Note A in the event there are insufficient Available Incremental Taxes to pay such debt service and shall be replenished upon receipt of Available Incremental Taxes after payment of debt service owed on City Note A.

4.05 **Profit From Sale.** Chicago Neighborhood Initiatives agrees that it will re-invest its share of the profits, if any, from the sale of all or any part of the Project, into the Project or a future phase of the Project or PD 1167 within one year of the distribution of any such profits. For purposes of this Section 4.05, the term “profit” shall mean any proceeds paid to Chicago Neighborhood Initiatives from the sale of the Phase 1b Retail Project after payment of all of the following: (i) all loans encumbering the Property, including without limitation, loans by MBS UI Sub CDE XVI, LLC, in the aggregate amount of \$11,760,000, and RBC Community Development Sub 3, LLC, in the aggregate amount of \$14,500,000; (ii) funding any reserves which Developer deems commercially reasonably necessary for any contingent or unforeseen liabilities or obligations of Developer; (iii) any “Operating Deficit Loans” and “Development Loans” advanced by either of Pullman Park Development’s limited liability company members; and (iv) the return of all private capital invested by Chicago Neighborhood Initiatives. For purposes of this Section 4.05 the term “sale” shall mean a transfer of real estate to an unaffiliated entity, and does not include a refinance of loans encumbering the Property or a sale or transfer of a member interest in Pullman park Development.

4.06 **Junior Mortgage.** If the City so requires, Developer shall deliver a Junior Mortgage to the City substantially in the form of Exhibit K, together with such financing statements as the City may require. At any time after the issuance of the Certificate of Completion, following a request by Developer, the City agrees to a release of the Junior Mortgage and consents to the recording of such release. The Junior Mortgage shall be subordinate to all Lender Financing.

4.07 **Treatment of Prior Expenditures.** Only those expenditures made by Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to HED and approved by HED as satisfying costs covered in the Project Budget, will be considered previously contributed Equity or Lender Financing, if any, hereunder (the “**Prior Expenditure(s)**”). HED has the right, in its sole discretion, to disallow any such expenditure (not listed on Exhibit H) as a Prior Expenditure as of the date of this Agreement. Exhibit H identifies the prior expenditures approved by HED as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements will not be reimbursed to Developer, but will reduce the amount of Equity and/or Lender Financing, if any, required to be contributed by Developer under Section 4.01.

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

4.09 **TIF Bonds.** The Commissioner of HED may, in his or her sole discretion, recommend that the City Council approve an ordinance or ordinances authorizing the issuance of TIF Bonds in an amount which, in the opinion of the City Comptroller, is marketable under the then current market conditions. The proceeds of TIF Bonds may be used to pay City Funds due under this Agreement and for other purposes as the City may determine. The costs of issuance of the TIF Bonds would be borne solely by the City. Developer will cooperate with the City in the issuance of the TIF Bonds, as provided in Section 8.05.

4.10 **Preconditions of Disbursement.** Developer has submitted documentation satisfactory to HED regarding the expenditures made with respect to the Phase 1a Infrastructure Improvements. Prior to the disbursement of City Funds from the City Note Proceeds Subaccount, Developer shall submit documentation regarding the applicable expenditures to HED, which shall be satisfactory to HED in its sole discretion. Delivery by Developer to HED of any request for disbursement of City Funds from the City Note Proceeds Subaccount, hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

- (a) the representations and warranties contained in this Agreement are true and correct and Developer is in compliance with all covenants contained herein;
- (b) Developer has received no notice and has no knowledge of any lien or claim of lien either filed or threatened against the Property or the Phase 1b New Work except for the Permitted Liens;
- (c) no Event of Default or condition or event which, with the giving of notice or passage time or both, would constitute an Event of Default exists or has occurred;

The City shall have the right, in its discretion, to require Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by Developer. In addition, Developer shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including not limited to the requirements set forth in the Bond Ordinance, if any; the TIF Bond Ordinance, if any; the Bonds, if any; the TIF Bonds, if any; the TIF Ordinances and this Agreement.

4.11 **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 HED, 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 HED.

ARTICLE FIVE: CONDITIONS PRECEDENT TO CLOSING

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

5.01 **Project Budget.** Developer will have submitted to HED, and HED will have approved, the Project Budget stated in Exhibit D-1, in accordance with the provisions of Section 3.03. This condition precedent has been satisfied prior to the date hereof.

5.02 **Scope Drawings and Plans and Specifications.** Developer will have submitted to HED, and HED will have approved, the Scope Drawings and Plans and Specifications in accordance with the provisions of Section 3.02. This condition precedent has been satisfied prior to the date hereof.

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

5.04 **Financing.**

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

(along with the Equity and other financing sources, if any, stated in Section 4.01) to complete the Project.

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

(c) Any financing liens against the Property or the Project in existence at the Closing Date will be subordinated to certain encumbrances of the City stated in this Agreement under a subordination agreement, in the form of Exhibit O, or such other form as may be acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of Developer, in the Office of the Recorder of Deeds of Cook County.

5.05 **Title.** On the Closing Date, Developer will furnish the City with a copy of the Title Policy for the Property, showing Pullman Park Development as the named insured. The Title Policy will be dated as of the Closing Date and will contain only those title exceptions listed as Permitted Liens on Exhibit I and will evidence the recording of this Agreement under the provisions of Section 8.15. The Title Policy will also contain the following endorsements as required by Corporation Counsel: an owner's comprehensive endorsement and satisfactory endorsements regarding location, access, and survey. On or prior to the Closing Date, Developer will provide to HED documentation related to the Property and copies of all easements and encumbrances of record with respect to the Property not addressed, to HED's satisfaction, by the Title Policy and any endorsements thereto.

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

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

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

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

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

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

5.10 **Evidence of Prior Expenditures.** Prior to the Closing Date, Developer will have provided evidence satisfactory to HED of the Prior Expenditures as provided in Section 4.05. Such evidence of Prior Expenditures may be updated to the Closing Date by Developer.

5.11 **Financial Statements.** Prior to the Closing Date, Developer will have provided Financial Statements to HED for its 2009 and 2010 fiscal years, if available, and its most recently publicly available unaudited interim Financial Statements, in each case together with any opinions and management letters prepared by auditors.

5.12 **Additional Documentation.** Prior to the Closing Date, Developer will have provided documentation to HED, satisfactory in form and substance to HED, with respect to current employment profile, if requested by HED, and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds on the Property, if any.

5.13 **Environmental Reports.** Prior to the Closing Date, Developer will provide HED with copies of all environmental reports or audits, if any, obtained by Developer with respect to the Property, together with any notices addressed to Developer from any agency regarding environmental issues at the Property. Prior to the Closing Date, Developer will have provided the City with a letter from the environmental engineer(s) who completed such report(s) or audit(s), authorizing the City to rely on such report(s) or audit(s).

5.14 **Entity Documents; Economic Disclosure Statement.**

(a) **Entity Documents.** Developer will provide a copy of its current Articles of Organization, with all amendments, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of Illinois and all other states, if any, in which Developer is registered to do business; its limited liability company operating agreement; a roster of limited liability company members showing their respective membership interests; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such other organizational documentation as the City may request.

(b) Economic Disclosure Statement. Developer will provide the City an EDS, in the City's then current form, dated as of the Closing Date, which is incorporated by reference and Developer further will provide any other affidavits or certifications as may be required by Federal, State or local law in the award of public contracts, all of which affidavits or certifications are incorporated by reference. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Developer and any other parties required by this Section 5.14 to complete an EDS must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership and changes in disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

5.15 Litigation. Each of Pullman Park Development and Chicago Neighborhood Initiatives has provided to Corporation Counsel and HED in writing, a description of all pending or threatened litigation or administrative proceedings: (a) involving their respective property located in the City, (b) that each is otherwise required to publicly disclose or that may affect the ability of each entity to perform its duties and obligations under this Agreement, or (c) involving the City or involving the payment of franchise, income, sales or other taxes by each entity to the State of Illinois or the City. In each case, the description shall specify 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.

ARTICLE SIX: AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors.

(a) HED acknowledges that Developer has constructed the Phase 1a Infrastructure Improvements and the Phase 1b Completed Work under a construction contract entered into prior to the date of this Agreement. HED acknowledges that Developer has selected Raffin Construction Company, as the general contractor (the "**General Contractor**") for the Phase 1b New Work. Developer must solicit, or must cause the General Contractor to solicit, bids from qualified contractors eligible to do business with the City.

(b) For the TIF-Funded Improvements, Developer must cause the General Contractor to select the subcontractor submitting the lowest responsible and responsive bid as determined by Developer who can complete the Project (or phase thereof) in a timely and good and workmanlike manner; provided, however, that Developer may consider a bidder's ability to meet the unique challenges of the Project in evaluating the "lowest responsible bid" rather than the lowest bid. If the General Contractor selects any subcontractor submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds.

(c) Developer must submit copies of the Construction Contract to HED as required under Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements must be provided to HED within 20 Business Days of the execution thereof. Developer must ensure that the General Contractor will not (and must cause the General Contractor to ensure that the subcontractors will not) begin work on the Project (or any phase thereof) until the applicable Plans and Specifications for that phase have been approved by HED and all requisite permits have been obtained.

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

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

6.04 **Employment Opportunity.** Developer will contractually obligate and cause the General Contractor to agree and contractually obligate each subcontractor to agree to the provisions of Article Ten. The parties acknowledge that the contracting, hiring and testing requirements for the MBE/WBE and City Residency obligations in Article Ten are applied by the City's monitoring staff on an aggregate basis, and that it shall not be an event of default under this Agreement, nor shall the payment of the City resident hiring shortfall amount be required, if the General Contractor does not impose such obligations on each subcontractor, or if any one subcontractor does not satisfy such obligations, so long as such obligations are satisfied on an aggregate basis.

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

ARTICLE SEVEN: COMPLETION OF CONSTRUCTION

7.01 **Certificate of Completion of Construction.** Upon completion of the construction of the Project in compliance with the terms and conditions of this Agreement, and upon Developer's written request, HED will issue to Developer a certificate of completion of

construction in recordable form (the “**Certificate of Completion**”) certifying that Developer has fulfilled its obligation to complete the Project in compliance with the terms and conditions of this Agreement, provided the following conditions have been met:

(a) issuance of a certificate of occupancy by the City, not to be unreasonably withheld, or other evidence acceptable to HED, that Developer has complied with building permit requirements for the 67,000 square feet of retail space constructed as part of the Phase 1b New Work; and

(b) evidence that at least 75% of the net rentable area of the Phase 1b Retail Project has been leased and is occupied for at least one Business Day.

HED will respond to Developer’s written request for a Certificate of Completion within 30 days by issuing either a Certificate of Completion or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed and the measures which must be taken by Developer in order to obtain the Certificate of Completion. Developer may resubmit a written request for a Certificate of Completion upon completion of such measures, and the City will respond within 30 days in the same way as the procedure for the initial request. Such process may repeat until the City issues a Certificate of Completion.

7.02 Effect of Issuance of Certificate of Completion; Continuing Obligations.

(a) The Certificate of Completion relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to Developer’s obligation to complete such activities have been satisfied. After the issuance of a Certificate of Completion, 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 of Completion must not be construed as a waiver by the City of any of its rights and remedies under such executory terms.

(b) Those covenants specifically described at Section 8.16 (Real Estate Taxes) as covenants that run with the land comprising the Property are the only covenants in this Agreement intended to be binding throughout the Term of the Agreement upon any transferee of the Developer holding title to the Property or any portion thereof, regardless of whether or to what extent that owner is also an assignee of Developer as described in this paragraph and regardless of whether or not a Certificate of Completion has been issued. Unless a Certificate of Completion has been issued, those covenants specifically described at Section 8.02 (Covenant to Redevelop) as covenants that run with the land comprising the Property are the only other covenants in this Agreement intended to be binding throughout the Term of the Agreement upon any transferee of the Developer holding title to the Property or any portion thereof, regardless of whether or to what extent that owner is also an assignee of Developer as described in this paragraph. The other executory terms of this Agreement that remain after the issuance of a Certificate of Completion will be binding only upon Developer or a permitted assignee of

Developer who, as provided in Section 18.15 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

7.03 **Failure to Complete.** If Developer fails to timely complete the Project in compliance with the terms of this Agreement, then the City will have, but will not be limited to, any of the following rights and remedies, in addition to those stated in Section 15.02.

(a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed under this Agreement, other than principal and interest due under City Note A; and

(b) the right to redeem City Note A from amounts on deposit in the City Note Proceeds Subaccount of the Construction Escrow; and

(c) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of the payment and performance bond form attached as Exhibit L, and, if such funds are insufficient, then from City Funds or other City monies. If the aggregate costs incurred by the City to complete the TIF-Funded Improvements exceeds the amount of funds described in the preceding sentence, Developer will reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of those funds.

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

ARTICLE EIGHT: REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.

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

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

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

(c) the execution, delivery and performance by Pullman Park Development of this Agreement has been duly authorized by all necessary limited liability company action, and does not and will not violate its Articles of Organization as amended and supplemented, its operating

agreement, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Pullman Park Development is now a party or by which Pullman Park Development or any of its assets is now or may become bound;

(d) Pullman Park Development has acquired and, subject to the right to sell, transfer, convey, lease or otherwise dispose of the outlots and tenant spaces, as set forth in Section 8.01(n) below. will maintain good, indefeasible and merchantable fee simple title to the Property (and improvements located thereon) free and clear of all liens (except for the Permitted Liens or Lender Financing, if any, as disclosed in the Project Budget, and those liens otherwise bonded or insured over in accordance with the terms of this Agreement).

(e) Pullman Park Development is now, and for the Term of the Agreement, will remain solvent and able to pay its debts as they mature;

(f) Chicago Neighborhood Initiatives is an Illinois not-for-profit corporation, duly organized, validly existing, qualified to do business in Illinois, and licensed in any other state where, due to the nature of its activities or properties, such qualification or license is required;

(g) Chicago Neighborhood Initiatives has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(h) the execution delivery and performance by Chicago Neighborhood Initiatives of this Agreement has been duly authorized by all necessary not-for-profit corporation action, and does not and will not violate its Articles of Incorporation as amended and supplemented, its by-laws, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Chicago Neighborhood Initiatives or any of its assets is now or may become bound;

(i) Chicago Neighborhood Initiatives is now, and for the Term of the Agreement, will remain solvent and able to pay its debts as they mature;

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

(k) Developer has or, as and when required, will obtain and maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to construct and complete the Project;

(l) Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which Developer or any of its assets is bound beyond applicable notice and cure periods;

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

(n) prior to the issuance of a Certificate of Completion, if it would adversely affect Developer's ability to perform its obligations under this Agreement, Developer will not do any of the following without the prior written consent of HED: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose (directly or indirectly) of all or substantially all of its assets or any portion of the Property or the Project (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business, including the sale, transfer, conveyance, lease or other disposition of retail outlots and tenant spaces; (3) enter into any transaction outside the ordinary course of Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity to the extent that such action would have an adverse effect on Developer's ability to perform its obligations under this Agreement; or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition. Provided, however, that the foregoing shall not apply to the transfer of an ownership interest that is the result of a merger, consolidation or sale of all or substantially all of the assets of, or any other transaction by, U.S. Bank National Association, a national banking association ("USB"), and such merger, consolidation, sale or other transaction also results in the simultaneous transfer (directly or indirectly) of all of USB's (or its affiliates') ownership interests in North Pullman 111th, Inc., an Illinois corporation, to the same entity to which USB's ownership interest in Developer is being transferred. Notwithstanding the foregoing provisions set forth in this Section 8.01(n), prior to the issuance of a Certificate of Completion, Pullman Park Development or either of Pullman Park Development's members may assign their interests in Pullman Park Development, the Property or the Project to one or more entities that are at least fifty percent (50%) owned and controlled (directly or indirectly) by one of the two current Members of Pullman Park Development as of the date hereof or by a lender, so long as each of the following conditions are satisfied:

(i) no fewer than thirty (30) days prior to such assignment, the assigning entity provides the City with written notice of such assignment, together with an EDS, in the City's then current form, dated as of the date of such notice and any other affidavits or certifications as may be required by Federal, State or local law in the award of public contracts executed by each proposed assignee (plus such supplemental EDSs, affidavits and certifications as are required for entities that will own or control the assignee);

(ii) neither the assignee nor any entity or individual that owns or controls the assignee is then ineligible to do business with the City under Chapter 1-23 of the Municipal Code;

(iii) the assignee assumes the obligations and liabilities of the assigning entity under this Agreement in a written instrument; and

(iv) the assigning entity or assignee delivers written notice to the City with a correct and complete copy of the written instrument pursuant to which the assignment and assumption was accomplished;

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

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

(q) neither Developer nor any Affiliate thereof 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 Lists, the Unverified List, the Entity List and the Debarred List.

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

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

8.04 Use of City Funds. City Funds disbursed to Developer will be used by Developer solely to reimburse Developer for its payment for the TIF-Funded Improvements as provided in this Agreement. It is the understanding of the parties that, following the City’s payment of \$6,100,000 to Developer as provided in Section 4.03(b) as reimbursement for previously incurred Phase 1a Infrastructure Improvements, such funds may be used by Developer to pay for any costs of the Phase 1b New Work.

8.05 **Other Bonds.** At the request of the City, Developer will agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole and absolute discretion) 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 provided a source of funds for the payment for the TIF-Funded Improvements (the “**Bonds**”); provided, however, that any such amendments will not have a material adverse effect on Developer or the Project. Developer will, at 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 (but not including proprietary sales and operating information), and assisting the City in its preparation of an offering statement with respect thereto. Developer will not have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by Developer that is determined to be false and misleading.

8.06 **Employment Opportunity.**

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

(b) Developer will deliver to the City written monthly progress reports detailing compliance with the requirements of Sections 8.08, (Prevailing Wage) 10.02 (City Resident Construction Worker Employment Requirement) and 10.03 (Developer’s MBE/WBE Commitment) of this Agreement. If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to HED which will outline, to HED’s satisfaction, the manner in which Developer will correct any shortfall.

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

8.08 **Prevailing Wage.** Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the State Department of Labor (the “**Labor Department**”), to all of their respective employees working on constructing the Phase 1b New Work or otherwise completing the TIF-Funded Improvements. All such contracts will list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed under such contract, or alternatively Developer will provide applicable schedules evidencing wage rates paid. If the Labor Department revises such prevailing wage rates, the revised rates will apply to all such contracts. Upon the City’s request, Developer will

provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.08.

8.09 **Arms-Length Transactions.** Unless HED shall have given its prior written consent with respect thereto, no Affiliate of Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. Developer will provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to an Affiliate by Developer and reimbursement to Developer for such costs using City Funds, or otherwise), upon HED's request, prior to any such disbursement.

8.10 **Financial Statements.** Developer will obtain and provide to HED Financial Statements for 2011 and, if available, 2012, and each year thereafter for the Term of the Agreement.

8.11 **Insurance.** Solely at its own expense, Developer will comply with all applicable provisions of Article Twelve (Insurance) hereof.

8.12 **Non-Governmental Charges.**

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

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charges by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charges, prevent the imposition of a lien or remove such lien, or prevent the transfer or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charges at the time and in the manner provided in this Section 8.12); or

(ii) at HED's sole option, to furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED will require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of

any such transfer or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charges and all interest and penalties upon the adverse determination of such contest.

8.13 **Developer's Liabilities.** Developer will not enter into any transaction that would materially and adversely affect its ability to: (i) perform its obligations under this Agreement or (ii) repay any material liabilities or perform any material obligations of Developer to any other person or entity. Developer will immediately notify HED of any and all events or actions which may materially affect Developer's ability to carry on its business operations or perform its obligations under this Agreement or under any other documents and agreements.

8.14 **Compliance with Laws.**

(a) **Representation.** To Developer's knowledge, after diligent inquiry, the Property and the Phase 1b Retail Project are in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Property and the Phase 1b Retail Project. Upon the City's request, Developer will provide evidence reasonably satisfactory to the City of such current compliance.

(b) **Covenant.** Developer covenants that the Property and the Phase 1b Retail Project will be operated and managed in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Property or the Phase 1b Retail Project, including the following Municipal Code Sections: 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550 or 11-4-1560, whether or not in performance of this Agreement. Upon the City's request, Developer will provide evidence to the City of its compliance with this covenant.

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

8.16 **Real Estate Provisions.**

(a) **Governmental Charges.**

(i) **Payment of Governmental Charges.** Subject to subsection (ii) below, Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon Developer or all or any portion of the Property or the Project provided, however, that this section shall not impose on Developer any obligation to be personally

liable on any tax that does not generally impose personal liability. “**Governmental Charge**” means all Federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to Developer, the Property or the Project, including but not limited to real estate taxes.

(ii) Right to Contest. Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or transfer or forfeiture of the Property or the Project. No such contest or objection will be deemed or construed in any way as relieving, modifying or extending Developer’s covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless Developer has given prior written notice to HED of Developer’s intent to contest or object to a Governmental Charge and, unless, at HED’s sole option:

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

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

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

8.17 **Annual Compliance Report.** Throughout the Term of the Agreement, Developer shall submit to HED the Annual Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

8.18 **Reserved.**

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

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

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

8.22 **No Business Relationship with City Elected Officials.** Developer acknowledges receipt of a copy of Section 2-156-030(b) of the Municipal Code and that Developer has read and understands such provision. Under Section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official or employee has a business relationship that creates a "**Financial Interest**" (as defined in Section 2-156-010 of the Municipal Code), or to participate in any discussion of any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a business relationship that creates a Financial Interest. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Agreement, or in connection with the transactions contemplated thereby, will be grounds for termination of this Agreement and the transactions contemplated thereby. Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated thereby.

8.23 **Inspector General.** It is the duty of Developer and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of Developer's officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant: (a) to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the

Municipal Code and (b) to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. Developer represents that it understands and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

8.24 Prohibition on Certain Contributions – Mayoral Executive Order No. 2011-4. Neither Developer or any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5% ("**Owners**"), spouses and domestic partners of such Owners, Developer's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("**Sub-owners**") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together, the "**Identified Parties**"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "**Mayor**") or to his political fundraising committee during: (i) the bid or other solicitation process for this Agreement or Other Agreement, including while this Agreement or Other Agreement is executory, (ii) the term of this Agreement or any Other Agreement between City and Developer, and/or (iii) any period in which an extension of this Agreement or Other Agreement with the City is being sought or negotiated.

Developer represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Developer or the date the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Developer shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Agreement for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Agreement, at law and in equity. This provision amends any Other Agreement and supersedes any inconsistent provision contained therein.

If applicable, if Developer violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, then HED may reject Developer's bid.

For purposes of this provision:

"Other Agreement" means any agreement entered into between the Developer and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a **"political contribution"** as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a **"political fundraising committee"** as defined in MCC Ch. 2-156, as amended.

8.25 Shakman Accord .

(a) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "**Shakman Accord**") and the June 24, 2011 "City of Chicago Hiring Plan" (the "**City Hiring Plan**") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Developer is aware that City policy prohibits City employees from directing any individual to apply for a position with Developer, either as an employee or as a subcontractor, and from directing Developer to hire an individual as an employee or as a subcontractor. Accordingly, Developer must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Developer under this Agreement are employees or subcontractors of Developer, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Developer.

(c) Developer will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity

that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Developer by a City employee or City official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, Developer will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("**IGO Hiring Oversight**"), and also to the Commissioner of HED. Developer will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Agreement.

8.26 FOIA and Local Records Act Compliance.

(a) FOIA. Developer acknowledges that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("**FOIA**"). The FOIA requires the City to produce records (very broadly defined in the FOIA) in response to a FOIA request in a very short period of time, unless the records requested are exempt under the FOIA. If Developer receives a request from the City to produce records within the scope of FOIA, that would be otherwise required under this Agreement then Developer covenants to comply with such request within two (2) Business Days of the date of such request. Failure by Developer to timely comply with such request will be a breach of this Agreement.

(b) Exempt Information. Documents that Developer submits to the City under Section 8.20, (Annual Compliance Report) or otherwise during the Term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by Developer to be treated as a trade secret or information that would cause competitive harm, FOIA requires that Developer mark any such documents as "proprietary, privileged or confidential." If Developer marks a document as "proprietary, privileged and confidential", then HED will evaluate whether such document may be withheld under the FOIA. HED, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

(c) Local Records Act. Developer acknowledges that the City is subject to the Local Records Act, 50 ILCS 205/1 et. seq, as amended (the "**Local Records Act**"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, Developer covenants to use its best efforts consistently applied to assist the City in its compliance with the Local Records Act concerning records arising under or in connection with this Agreement and the transactions contemplated in the Agreement.

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

ARTICLE NINE: REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY

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

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

ARTICLE TEN: DEVELOPER'S EMPLOYMENT OBLIGATIONS

10.01 **Employment Opportunity.** Developer, on behalf of itself and its successors and assigns, hereby agrees, and will contractually obligate its or their various contractors, subcontractors or any Affiliate of Developer on the Phase 1b New Work (collectively, with Developer, such parties are defined herein as the "**Employers**", and individually defined herein as an "**Employer**") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the construction of the Phase 1b New Work:

(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 Phase 1b New Work be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

(c) Each Employer will comply with all applicable Federal, State and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the State Human Rights Act, 775 ILCS 5/1-101 et.seq. (2006 State Bar Edition), as amended, and any subsequent amendments and regulations promulgated thereto.

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

(e) Each Employer will include the foregoing provisions of subparagraphs (a) through (d) in every construction contract entered into in connection with the Phase 1b New Work, after the Closing Date, and will require inclusion of these provisions in every subcontract entered into by any subcontractors, after the Closing Date, and every agreement with any Affiliate operating on the Property or at the Phase 1b New Work, after the Closing Date, so that each such provision will be binding upon each contractor, subcontractor or Affiliate, as the case may be.

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

10.02 City Resident Construction Worker Employment Requirement.

(a) Developer agrees for itself and its successors and assigns, and will contractually obligate its General Contractor and will cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Phase 1b New Work they will comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Phase 1b New Work will be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, Developer, its General Contractor and each subcontractor will

be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. Developer, the General Contractor and each subcontractor will use their respective best efforts to exceed the minimum percentage of hours stated above, and to employ neighborhood residents in connection with the Phase 1b New Work.

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

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

(d) Developer, the General Contractor and each subcontractor will provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Phase 1b New Work. Each Employer will maintain copies of personal documents supportive of every Chicago employee’s actual record of residence.

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

(f) Upon 2 Business Days prior written notice, Developer, the General Contractor and each subcontractor will provide full access to their employment records related to the construction of the Phase 1b New Work to the Chief Procurement Officer, the Commissioner of HED, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Developer, the General Contractor and each subcontractor will maintain all relevant personnel data and records related to the construction of the Phase 1b New Work for a period of at least 3 years after final acceptance of the work constituting the Phase 1b New Work.

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

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

(i) When work at the Phase 1b New Work is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this

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

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

(k) Developer will cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Phase 1b New Work, entered into after the Closing Date.

10.03 Developer's MBE/WBE Commitment. Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements stated in this section, will contractually obligate the General Contractor to agree that during the construction of the Phase 1b New Work:

(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 Phase 1b New Work, at least the following percentages of the MBE/WBE Budget (as stated in Exhibit D-2) must be expended for contract participation by Minority-Owned Businesses ("**MBEs**") and by Women-Owned Businesses ("**WBEs**"):

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

(b) For purposes of this Section 10.03 only:

(i) Developer (and any party to whom a contract is let by Developer in connection with the Phase 1b New Work) is deemed a “**contractor**” and this Agreement (and any contract let by Developer in connection with the Phase 1b New Work) is 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.

(ii) The term “**minority-owned business**” or “**MBE**” 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.

(iii) The term “**women-owned business**” or “**WBE**” 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.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, Developer’s MBE/WBE commitment may be achieved in part by Developer’s status as an MBE or WBE (but only to the extent of any actual work performed on the Phase 1b New Work by Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of: (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Phase 1b New Work by the MBE or WBE), by Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Phase 1b New Work by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Phase 1b New Work to one or more MBEs or WBEs, or by the purchase of materials or services used in the Phase 1b New Work 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 Developer’s MBE/WBE commitment as described in this Section 10.03. In compliance with Section 2-92-730, Municipal Code of Chicago, Developer will not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of HED.

(d) Developer must deliver quarterly reports to the City’s monitoring staff during the Phase 1b New Work describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports will include, inter alia: the name and business address of each MBE and WBE solicited by Developer or the General Contractor to work on the Phase 1b New Work, and the responses received from such solicitation; the name and business address of each MBE or WBE actually involved in the Phase 1b New Work; 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 Developer’s compliance with this MBE/WBE commitment. Developer will maintain records of all relevant

data with respect to the utilization of MBEs and WBEs in connection with the Phase 1b New Work for at least 5 years after completion of the Phase 1b New Work, and the City's monitoring staff will have access to all such records maintained by Developer, on 5 Business Days' notice, to allow the City to review Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Phase 1b New Work.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, Developer is 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 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 Phase 1b New Work, Developer shall be required to meet with the City's monitoring staff with regard to Developer's compliance with its obligations under this Section 10.03. The General Contractor and all major subcontractors are required to attend this pre-construction meeting. During said meeting, Developer will demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 10.03, the sufficiency of which will be approved by the City's monitoring staff. During the Phase 1b New Work, 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 Phase 1b New Work 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 Developer is not complying with its obligations under this Section 10.03, will, upon the delivery of written notice to 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 Developer to halt the Phase 1b New Work, (2) withhold any further payment of any City Funds to Developer or the General Contractor, or (3) seek any other remedies against Developer available at law or in equity.

ARTICLE ELEVEN: ENVIRONMENTAL MATTERS

11.01 **Environmental Matters**. Developer hereby represents and warrants to the City that Developer has conducted environmental studies sufficient to conclude that the Phase 1b

New Work may be constructed, completed and operated in accordance with all Environmental Laws.

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

ARTICLE TWELVE: INSURANCE

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

ARTICLE THIRTEEN: INDEMNIFICATION

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

- (i) Any cost overruns as described in Section 4.08; or
- (ii) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(iii) 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

(iv) 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 Developer or its agents, employees, contractors or persons acting under the control or at the request of Developer or any affiliate of Developer; or

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

(vi) any act or omission by Developer or any Affiliate of Developer;

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

ARTICLE FOURTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 **Books and Records.** Developer will keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual costs of the Phase 1b New Work and the disposition of all funds from whatever source allocated thereto, and to monitor the Phase 1b New Work. All such books, records and other documents related to the Project, including but not limited to Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, will be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at Developer's expense. Developer will not pay for salaries or fringe benefits of auditors or examiners. Developer must incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer with respect to the Phase 1b New Work. The City shall provide three (3) Business Days' prior written notice to Developer in accordance with Section 17. The notice shall indicate the date and time of the inspection. All inspections shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

14.02 **Inspection Rights.** Upon three (3) Business Days' notice, any authorized representative of the City shall have access to all portions of the Property or the Phase 1b New Work during normal business hours for the Term of the Agreement. The City shall provide three (3) Business Days' prior written notice to Developer in accordance with Section 17. The notice

shall indicate the date and time of the inspection. All inspections shall be conducted between the hours 9:00 a.m. and 5:00 p.m., Monday through Friday.

ARTICLE FIFTEEN: DEFAULT AND REMEDIES

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

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

(b) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under any other agreement with any person or entity if such failure may have a material adverse effect on Developer’s business, property (including the Property or the Phase 1b Retail Project), assets (including the Property or the Phase 1b Retail Project), operations or condition, financial or otherwise;

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

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt by Developer to create, any lien or other encumbrance upon the Property or the Phase 1b Retail Project, including any fixtures now or hereafter attached thereto, other than the Permitted Liens or any Permitted Mortgage, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against Developer or for the liquidation or reorganization of Developer or alleging that Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of 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 Developer, provided, however, that if such commencement of proceedings is involuntary, such action will not constitute an Event of Default unless such proceedings are not dismissed within 60 days after the commencement of such proceedings;

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

(g) the entry of any judgment or order against Developer, not covered by insurance for an amount in excess of \$1.0 million which remains unsatisfied or undischarged and in effect for 60 days after such entry without a stay of enforcement or execution;

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

(i) the dissolution of Developer; or

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

(k) prior to the expiration of the Term of the Agreement except as otherwise provided herein, the sale or transfer of all of the ownership interests of Developer without the prior written consent of the City; or

(l) The failure of Developer, or the failure by any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to Developer, to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code; such failure shall render this Agreement voidable or subject to termination, at the option of the Chief Procurement Officer.

For purposes of Section 15.01(j), hereof, a natural person with a material interest in Developer is one owning in excess of seven and a half percent (7.5%) of Developer's issued and outstanding ownership shares or interests.

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, provided, however, that, notwithstanding any conflicting provision herein, upon issuance of City Note A, the City's obligation to make payments on City Note A shall be vested without defense to payment (other than insufficiency of Available Incremental Taxes), including as a result of an Event of Default hereunder, and the City's obligation to make payments on City Note A shall survive any termination of this Agreement. Subject to the foregoing, the City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. To the extent permitted by law, the City may also lien the Property.

15.03 **Curative Period.**

(a) In the event Developer fails to perform a monetary covenant which Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default will not be deemed to have occurred unless

Developer has failed to perform such monetary covenant within 10 days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant.

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

15.04 Joint and Several Liability.

(a) By entering into this Agreement, Pullman Park Development and Chicago Neighborhood Initiatives each specifically agree that the respective undertakings, liabilities and obligations for “**Developer**” stated in this Agreement are for each entity joint and several with the other entity. Such joint and several undertakings means that each entity is individually satisfactory performance of each and every obligation, covenant, condition, requirement, undertaking or payment of the “**Developer**” as stated in this Agreement, and each entity is individually bound by and obligated to each and every term and condition in this Agreement.

(b) The joint and severally undertaking of the entities stated in subsection (a) above is intended to be continuing throughout the Term of the Agreement. Such joint and several undertaking will not be changed, modified, reduce or released in any way by:

- (i) any change, amendment, modification or correction to this Agreement, the City Notes or any other agreement or undertaking contemplated or reference in this Agreement; or,
- (ii) the existence of any claim, setoff, defense, counter-claim or other right which either Pullman Park Development or Chicago Neighborhood Initiatives may have or assert against each other or against the City or against any third party.

(c) From time-to-time, and at any time during the Term of the Agreement, the City may assert and pursue one or more of its remedies under this Agreement against either Pullman Park Development or Chicago Neighborhood Initiatives as the case may be under this Agreement.

ARTICLE SIXTEEN: MORTGAGING OF THE PROJECT

16.01 Mortgaging of the Project. Any and all mortgages or deeds of trust in place as of the date hereof with respect to the Property or Project or any portion thereof are listed on

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

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

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

(c) If any mortgagee or any other party shall succeed to Developer’s interest in the Property or any portion thereof by the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer’s interest hereunder in accordance with Section 18.15 hereof, then the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the executory obligations and liabilities of “Developer” hereunder. Notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer’s interest under this Agreement, such party will have no liability under this Agreement for any Event of Default of Developer which occurred prior to the time such party succeeded to the interest of Developer under this Agreement, in which case Developer will be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of

Developer's interest hereunder, such party will be entitled to no rights and benefits under this Agreement, and such party will be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

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

ARTICLE SEVENTEEN: NOTICES

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

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

With Copies To: City of Chicago
 Corporation Counsel
 Attn: Finance and Economic Development Division
 121 North LaSalle Street, Room 600
 Chicago, IL 60602
 312/744-0200 (Main No.)
 312/742-0277 (Fax)

If to Developer: Pullman Park Development, LLC
 c/o Chicago Neighborhood Initiatives, Inc.
 1000 E. 111th Street – 10th Floor
 Chicago, IL 60628
 Attn: David Doig

Pullman Park Development, LLC
c/o Chicago Neighborhood Initiatives, Inc.
1000 E. 111th Street – 10th Floor
Chicago, IL 60628

Attn: Angie Marks

With Copies To: DLA Piper LLP (US)
203 North LaSalle Street
19th Floor
Chicago, IL 60601
Attn: David L. Reifman, Esq.
Mariah F. DiGrino, Esq.

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

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

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

ARTICLE EIGHTEEN: ADDITIONAL PROVISIONS

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

Agreement. 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 Developer by more than 180 days.

18.02 **Complete Agreement, Construction, Modification.** This Agreement, including any exhibits and the other agreements, documents and instruments referred to herein or contemplated hereby, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, commitments and writings with respect to such subject matter. This Agreement and the Schedules and Exhibits attached hereto may not be contradicted by evidence of prior, contemporaneous, or subsequent verbal agreements of the parties. There are no unwritten verbal agreements between the parties.

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

18.04 **Further Assurances.** Developer 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, and to accomplish the transactions contemplated in this Agreement.

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

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

18.07 **Parties in Interest/No Third Party Beneficiaries.** The terms and provisions of this Agreement are binding upon and inure to the benefit of, and are enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or Developer, will be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or Developer.

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

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

18.10 **Counterpart Facsimile Execution.** For purposes of executing this Agreement, a document signed and transmitted by facsimile machine will be treated as an original document. The signature of any party thereon will be considered as an original signature, and the document transmitted will be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile document will be re-executed by other parties in original form. No party hereto may raise the use of a facsimile machine as a defense to the enforcement of this Agreement or any amendment executed in compliance with this section. This section does not supersede the requirements of Article Seventeen: Notices.

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

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

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

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

18.15 **Assignment.** Prior to the issuance by the City to Developer of a Certificate of Completion, 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 may assign, on a collateral basis, the right to receive City Funds to a lender providing Lender Financing, if any, which has been identified to the City as of the Closing Date. Any successor in interest to Developer under this Agreement (excluding any Lender that has been assigned only the right to received City Funds on a collateral basis) will certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement for the Term of the Agreement. Developer hereby consents to the City's assignment or other transfer of this Agreement at any time in whole or in part.

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

18.17 **Force Majeure.** Neither the City nor Developer nor any successor in interest to either of them will be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by: damage or destruction by fire or other casualty, flood, war, acts of terrorism, imposition of martial law, government regulation or executive order, plague or other illness, bank runs or bank holidays or stock or commodity exchange closures or wire transfer interruptions, capital controls, civil disorders, rebellions or revolutions, strike, shortage of material, power interruptions or blackouts, cyber attacks, electro magnetic pulse ("EMP") attacks, internet disruptions or shut-downs, shortages or rationing of food, water or fuel, 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, except to the extent that, the non-performing party is at fault in failing to prevent or causing such default or delay; and provided that such default or delay can not reasonably be circumvented by the non-performing party through the use of alternative sources, work around plans or other means. The individual or entity relying on this section with respect to any such delay will, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay affected by any such events described above.

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

18.19 **Business Economic Support Act.** Under the Business Economic Support Act (30 ILCS 760/1 *et seq.* (2006 State Bar Edition), as amended), if Developer is required to provide notice under the WARN Act, Developer will, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

18.20 **Approval.** Wherever this Agreement provides for the approval or consent of the City, HED or the Commissioner, or any matter is to be to the City's, HED'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, HED 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 HED in making all approvals, consents and determinations of satisfaction, granting the Certificate of Completion or otherwise administering this Agreement for the City.

18.21 **Construction of Words.** The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise. The word "shall" means "has a duty to."

18.22 **Date of Performance.** If any date for performance under this Agreement falls on a Saturday, Sunday or other day which is a holiday under Federal law or under State Law, the date for such performance will be the next succeeding Business Day.

18.23 **Survival of Agreements.** All covenants and agreements of the parties contained in this Agreement will survive the Closing Date in accordance with the provisions of this Agreement.

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

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

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

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

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

PULLMAN PARK DEVELOPMENT, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY

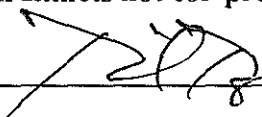
By its managing member: Chicago Neighborhood Initiatives, Inc., an Illinois not-for-profit corporation:

By: 

Printed Name: David Dorig

Title: President

CHICAGO NEIGHBORHOOD INITIATIVES, INC., an Illinois not-for-profit corporation

By: 

Printed Name: David Dorig

Title: President

CITY OF CHICAGO

By: _____

Commissioner,
Department of Housing and Economic
Development

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

PULLMAN PARK DEVELOPMENT, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY

By its managing member: Chicago Neighborhood Initiatives, Inc., an Illinois not-for-profit corporation:

By: _____

Printed Name: _____

Title: _____


CHICAGO NEIGHBORHOOD INITIATIVES, INC., an Illinois not-for-profit corporation

By: _____

Printed Name: _____

Title: _____

CITY OF CHICAGO

By:  _____

ANDREW J. MOONEY, Commissioner,
Department of Housing and Economic
Development

STATE OF IL)
) SS
COUNTY OF COOK)

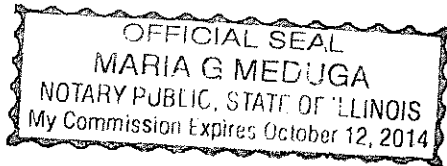
I, MARIA G MEDUGA, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID DOLG, personally known to me to be the PRESIDENT of Chicago Neighborhood Initiatives, Inc., an Illinois not-for-profit corporation, which is the managing member of PULLMAN PARK DEVELOPMENT, LLC, an Illinois limited liability company (the "Developer") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by Developer, as his/her free and voluntary act and as the free and voluntary act of Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 6th day of JUNE, 2013.

Maria G. Meduga
Notary Public

My Commission Expires 10/12/14

(SEAL)



STATE OF IL)
) SS
COUNTY OF COOK)

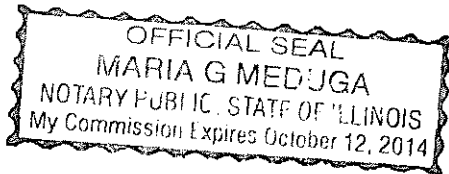
I, MARIA G MEDUGA, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID DOLB, personally known to me to be the PRESIDENT of Chicago Neighborhood Initiatives, Inc., an Illinois not-for-profit corporation, (the "Developer") and personally known to me to be the 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 Developer, as his/her free and voluntary act and as the free and voluntary act of Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 6th day of JUNE, 2013.

Maria G. Meduga
Notary Public

My Commission Expires 10/12/14

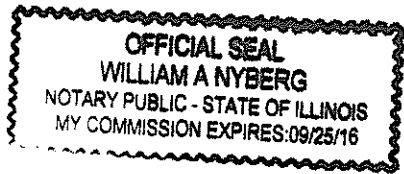
(SEAL)



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, William A. Nyberg, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew J. Mooney, personally known to me to be the _____ Commissioner of the Department of Housing and Economic 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~~^{he} signed, sealed, and delivered said instrument pursuant to the authority given to him~~her~~^{him} by the City, as ~~his~~^{his} free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 7th day of June, 2013.



William A. Nyberg
Notary Public

My Commission Expires 09/25/16

NORTH PULLMAN
REDEVELOPMENT PROJECT AREA

PULLMAN PARK DEVELOPMENT, LLC,
CHICAGO NEIGHBORHOOD INITIATIVES INC.
REDEVELOPMENT PROJECT

Redevelopment Agreement
dated as of June 7, 2013

SCHEDULE A

DEFINITIONS

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

“**Acquisition**” has the meaning defined in Recital D.

“**Act**” has the meaning defined in Recital B.

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

“**Affiliate(s)**” 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 person 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.

“**Agreement**” has the meaning defined in the Agreement preamble.

“**Annual Compliance Report**” shall mean a signed report from Developer to the City: (a) itemizing each of Developer’s obligations under the Agreement during the preceding calendar year; (b) certifying Developer’s compliance or noncompliance with such obligations; (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance; and (d) certifying that Developer is not in default beyond applicable notice and cure periods with respect to any provision of the Agreement, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) delivery of Financial Statements and unaudited financial statements (Section 8.13); (2) delivery of updated insurance certificates, if applicable (Section 8.11); (3) delivery of evidence of payment of Non-

Governmental Charges, if applicable (Section 8.12); (4) delivery of evidence of Developer's compliance with the green construction requirements of Section 3.15(c); and (5) compliance with all other executory provisions of the RDA.

"Available Incremental Taxes" means all Incremental Taxes (as defined below) deposited in the North Pullman Redevelopment Project Area Special Tax Allocation Fund attributed to the taxes levied on the former Ryerson Steel site, with a roster of applicable PINS scheduled in Exhibit B-4.

"Bank Trustee" has the meaning defined in Section 4.01, Note 3.

"Bonds" has the meaning defined in Section 8.05.

"Bond Ordinance" means the City Ordinance authorizing the issuance of Bonds.

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

"Capitalized Interest" has the meaning defined in Section 4.01(a) Note 3.

"Capitalized Interest Account" has the meaning defined in Section 4.01(a) Note 3.

"Certificate of Completion" has the meaning defined in Section 7.01.

"Change Order" means any amendment or modification to the Scope Drawings, the Plans and Specifications, or the Project Budget (all as defined below) within the scope of Section 3.03, 3.04 and 3.05.

"Chicago Neighborhood Initiatives" has the meaning defined in the Agreement Preamble.

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

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

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

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

"City Funds Requisition Form" means the Requisition Form substantially in the form of Exhibit N.

"City Group Member" has the meaning defined in Section 8.20.

"City Hiring Plan" has the meaning defined in Section 8.25.

“City Note A” shall mean the Tax Increment Allocation Revenue Note (Pullman Park Redevelopment Project), Tax Exempt Series A, to be in the form attached hereto as **Exhibit M-1**, in an initial principal amount equal to the amount that will result in City Note A Net Proceeds (after reductions for any required capitalized interest and debt service reserve fund), of Four Million Nine Hundred and Three Thousand Five Hundred and Twenty-Five Dollars (\$4,903,525), with a maximum principal amount of [\$6,750,000]. The determination of the initial principal amount of City Note A shall also be subject to an investor letter provided by a qualified investment banker that City Note A can be supported to such initial principal amount given market conditions as of the date of the investor letter. Interest on City Note A shall accrue upon issuance at a rate equal to the 20-year BAA Uninsured G.O. Bond Index as published by Thompson-Reuters Municipal Market Data (“MMD”) plus 250 basis points and shall compound annually. City Note A shall be tax exempt and shall have a first lien on the Available Incremental Taxes. Upon issuance, the City will issue an amortization schedule for City Note A. City Note A shall be issued on the Closing Date.

“City Note A Interest Rate” has the meaning defined in Section 4.03(d)(ii).

“City Note A Lock-Out Period” has the meaning defined in Section 4.03(d)(vi)(A).

“City Note A Net Proceeds” shall mean the amount of proceeds of City Note A deposited in the Construction Escrow after reductions for any required capitalized interest and debt service reserve fund.

“City Note B” shall mean the Tax Increment Allocation Revenue Note (Pullman Park Redevelopment Project), Taxable Series B, to be in the form attached hereto as **Exhibit M-2**, in an initial principal amount equal to the amount calculated as principal as stated in Section 4.03(e). Interest on City Note B shall accrue upon issuance at a rate equal the 20-year BBB Corporate bond index as published by Bloomberg plus 200 basis points and shall compound annually. City Note B shall be taxable and shall have a second lien on Available Incremental Taxes. City Note B shall be issued on the Note Sale Date if City Note A Net Proceeds (after reductions for any required capitalized interest and debt service reserve fund, is less than Four Million Nine Hundred and Three Thousand Five Hundred and Twenty-Five Dollars (\$4,903,525). City Note B shall be paid with excess Available Incremental Taxes after payment in full of all City Note A required funding.

“City Note B Interest Rate” has the meaning defined in Section 4.03(e)(ii).

“City Notes” shall mean, collectively, City Note A and City Note B.

“City Requirements” has the meaning defined in Section 3.07.

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

“Commissioner” or **“Commissioner of HED”** means that individual holding the office and exercising the responsibilities of the Commissioner or Acting Commissioner of the City’s Department of Housing and Economic Development and any successor City Department.

“Contribution” and **“political contribution”** each has the meaning defined in Section 8.24.

“Construction Contract” means that certain contract substantially in the form of Exhibit G, to be entered into between Developer and the General Contractor (as defined below) providing for construction of, among other things, the TIF-Funded Improvements. The parties to this Agreement may agree that the Construction Contract may be provided after Closing Date.

“Construction Escrow” shall mean the construction escrow established under the terms of the Escrow Agreement.

“Construction Program” has the meaning defined in Section 10.03(a).

“Corporation Counsel” means the City’s Department of Law.

“DCEO Grant” has the meaning defined in Recital D.

“Developer” has the meaning defined in the Agreement preamble.

“EDS” means the City’s Economic Disclosure Statement and Affidavit, on the City’s then-current form, whether submitted in paper or via the City’s online submission process.

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

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

“**Equity**” means funds of Developer (other than funds derived from Lender Financing (as defined below)) irrevocably available for the Project, in the amount stated in Section 4.01 hereof, which amount may be increased under Section 4.08 (Cost Overruns).

“**Escrow Agreement**” shall mean the Escrow Agreement substantially in the form of Exhibit F-1 establishing a construction escrow for the Project, to be entered into as of even date with this Agreement by and among the Title Company (or an affiliate of the Title Company), Developer, the General Contractor and the City. The Escrow Agreement shall provide among other things, that all draw requests from the Escrow must be accompanied by invoices, cancelled checks, lien waivers, owner’s sworn statements, MBE/WBE subcontractor , contract amounts, and certification letters a prerequisite to disbursements.

“**Event of Default**” has the meaning defined in Section 15.01.

“**Existing Mortgages**” has the meaning defined in Section 16.01.

“**Financial Statements**” means the financial statements regularly prepared by Developer, if any, and including, but not limited to, a balance sheet, income statement and cash-flow statement, in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods, for business enterprises operating for profit in the United States of America, and also includes financial statements (both audited and unaudited) prepared by a certified public accountant, together with any audit opinion and management letter issued by Developer’s auditor.

“**FOIA**” has the meaning defined in Section 8.26(a).

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

“**Governmental Charge**” has the meaning defined in Section 8.16(a)(i).

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

“**HED**” has the meaning defined in the Agreement preamble.

“**Human Rights Ordinance**” has the meaning defined in Section 10.01(a).

“**IGO Hiring Oversight**” has the meaning defined in Section 8.25.

“**Incremental Taxes**” means such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to, and when collected are paid

to, the Treasurer of the City for deposit by the Treasurer into a special tax allocation fund established to pay Redevelopment Project Costs (as defined below) and obligations incurred in the payment thereof, such fund for the purposes of this Agreement being the North Pullman Redevelopment Project Area Special Tax Allocation Fund.

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

“Junior Mortgage” means a junior mortgage that the City may require to be entered into on the Closing Date, to secure an amount of up to \$4,903,525, in a form reasonably acceptable to Developer, the City and Corporation Counsel, executed by Developer as mortgagor, in favor of the City as mortgagee, securing Developer’s completion of the Phase 1b New Work.

“Labor Department” has the meaning defined in Section 8.08.

“Lender” has the meaning defined in Section 3.08.

“Lender Financing” means funds borrowed by Developer from lenders, if any, and available to pay for costs of the Project.

“Local Records Act” has the meaning defined in Section 8.26(c).

“MBE(s)” has the meaning defined in Section 10.03(b).

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

“Minimum Assessed Value” has the meaning defined in Section 8.16(c)(i).

“Minority-Owned Business” has the meaning defined in Section 10.03(b).

“MOPD” has the meaning defined in Section 3.13.

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

“New Mortgage” has the meaning defined in Section 16.01.

“Note Sale Date” means the date on which City Note A is sold by Chicago Neighborhood Initiatives, as contemplated in Section 4.03(d).

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

“North Pullman Redevelopment Project Area Special Tax Allocation Fund” means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes (as defined above) will be initially deposited and then re-

deposited, together with any ported funds, to the Pullman Park Development, LLC/Chicago Neighborhood Initiatives Debt Service Account.

“**Other Agreement**” has the meaning defined in Section 8.24.

“**PD 1167**” has the meaning defined in Recital E.

“**Permitted Liens**” means those liens and encumbrances against the Property and/or the Project stated in Exhibit I.

“**Permitted Mortgage**” has the meaning defined in Section 16.01.

“**Phase 1a Infrastructure Improvements**” has the meaning defined in Recital D.

“**Phase 1b Completed Work**” has the meaning defined in Recital D.

“**Phase 1b New Work**” has the meaning defined in Recital D.

“**Phase 1b New Work Budget**” has the meaning defined in Section 3.03.

“**Phase 1b Retail Project**” has the meaning defined in Recital D.

“**Plan Adoption Ordinance**” has the meaning defined in Recital C.

“**Plans and Specifications**” means 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.

“**Political fundraising committee**” has the meaning defined in Section 8.24.

“**Prior Expenditure(s)**” has the meaning defined in Section 4.04.

“**Procurement Program**” has the meaning defined in Section 10.03(a).

“**Project**” has the meaning defined in Recital D.

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

“**Property**” has the meaning defined in Recital D.

“**Pullman Park Development**” has the meaning defined in the Agreement Preamble.

“**Qualified Transfer of City Note A**” means the sale or assignment of the City Note A or pledge of City Note A to a lender providing Lender Financing as long as:

(a) any sale or assignment is to a “qualified investor” with no view to resale or reassignment; and

(b) any sale or assignment is subject to the terms and procedures of an investment letter acceptable to the City; and

(c) any such pledge or assignment or sale transaction is of a kind, nature and purchase price that is reasonably acceptable to the City (which acceptance may, in the Commissioner’s reasonable discretion, include a modification of the requirements stated in the proceeding clauses (a) through (b)).

“Qualified Transfer of City Note B” means the sale or assignment of the City Note B or pledge of City Note B to a lender providing Lender Financing as long as:

(a) any sale or assigned is to a “qualified investor” with no view to resale or reassignment; and

(b) any sale or assignment is subject to the terms and procedures of an acceptable investment letter; and

(c) any such pledge or assignment or sale transaction is of a kind , nature and purchase price and nature that is reasonably acceptable to the City (which acceptance may, in the Commissioner’s reasonable discretion, include a modification of the requirements stated in the proceeding clauses (a) through (c)).

(d) Any holder(s) of City Note B acquired in a Qualified Transfer of City Note B transaction must certify to the City that such holder(s) understand the terms and conditions associated with receiving payments of interest and principal on City Note B.

“Redevelopment Area” means the North Pullman Redevelopment Project Area as legally described in Exhibit A, and defined in Recital C.

“Redevelopment Plan” has the meaning defined in Recital E.

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

“Requisition Form” has the meaning defined in Section 4.03(a).

“Reserve Escrow” shall mean an escrow to cure payment shortfalls if there are insufficient Available Incremental Taxes to make payments on City Note A.

“Reserve Escrow Agreement” shall mean the agreement substantially in the form of Exhibit F-2 establishing the Reserve Escrow.

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

“Shakman Accord” has the meaning defined in Section 8.25.

“State” means the State of Illinois as defined in Recital A.

“Survey” means a plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property meeting the 2011 minimum standard detail requirements for ALTA/ACSM Land Title Surveys, effective February 23, 2011, dated within 75 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, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and any updates thereof to reflect improvements to the Property as required by the City or the lender(s) providing Lender Financing, if any).

“Term of the Agreement” means the period of time commencing on the Closing Date and ending on December 31, 2033 (such date being the last date of the calendar year in which taxes levied in the year that is 23 years after the creation of the Redevelopment Area are paid) or such later date as the Redevelopment Area expires in accordance with the TIF Ordinances.

“TIF Adoption Ordinance” has the meaning stated in Recital C.

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

“TIF Bond Ordinance” has the meaning stated in Recital F.

“TIF Bond Proceeds” has the meaning stated in Recital F.

“TIF-Funded Improvements” means those improvements of the Project listed in Exhibit E, all of which have been determined by the City prior to the date hereof to be qualified Redevelopment Project Costs and costs that are eligible under the Redevelopment Plan for reimbursement by the City out of the City Funds, subject to the terms of this Agreement.

“TIF Ordinances” has the meaning stated in Recital C.

“Title Company” means First American Title Insurance Company.

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

“Under Assessment Complaint” has the meaning set forth in Section 8.16(c)(iii).

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

“WBE(s)” has the meaning defined in Section 10.03(b).

“Women-Owned Business” has the meaning defined in Section 10.03(b).

**NORTH PULLMAN
REDEVELOPMENT PROJECT AREA**

**PARK DEVELOPMENT, LLC
CHICAGO NEIGHBORHOOD INITIATIVES INC.
REDEVELOPMENT PROJECT**

Redevelopment Agreement
dated as of June 7, 2013

SCHEDULE B

ARTICLE TWELVE: INSURANCE REQUIREMENTS

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

(a) Prior to Execution and Delivery of this Agreement

(i) Workers' Compensation and Employers Liability Insurance

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

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

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

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

(i) Workers Compensation and Employers Liability Insurance

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

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

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

(iii) Automobile Liability Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

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

(v) All Risk Builders Risk Insurance

When the contractor undertakes any construction, including improvements, betterments, and/or repairs, Developer must cause each contractor to provide, or cause to be provided All Risk Blanket Builders

Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable, flood including surface water backup. The City will be named as an additional insured and loss payee.

(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

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

(ix) Blanket Crime

Developer must provide Crime Insurance or equivalent covering all persons handling funds under this Agreement, against loss by dishonesty, robbery, destruction or disappearance, computer fraud, credit card forgery,

and other related crime risks. The policy limit must be written to cover losses in the amount of the maximum monies collected or received and in the possession of Developer at any given time.

(c) Other Insurance Required.

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

(d) Other Requirements

- (i) Developer will furnish the City of Chicago, Department of Housing and Economic Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Developer will submit evidence of insurance on the City Insurance Certificate Form or commercial equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer must not be deemed to be a waiver by the City. Developer will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance will not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this Agreement until proper evidence of insurance is provided.
- (ii) The insurance will provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any and all deductibles or self insured retentions on referenced insurance coverages are borne by Developer.

- (iv) Developer agrees that insurers must waive rights of subrogation against the City, its employees, elected officials, agents, or representatives.
- (v) Developer expressly understands and agrees that any coverages and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.
- (vi) Developer expressly understands and agrees that Developer's insurance is primary and any insurance or self insurance programs maintained by the City will not contribute with insurance provided by Developer under the Agreement.
- (vii) The required insurance will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (viii) Developer will require its general contractor and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the contractor or subcontractors. All contractors and subcontractors will be subject to the same requirements of Developer unless otherwise specified herein.
- (ix) If Developer, contractor or subcontractor desires additional coverages, Developer, contractor and each subcontractor will be responsible for the acquisition and cost of such additional protection.
- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not, without Developer's written consent, increase such requirements.