

## Contract Summary Sheet

**Contract (PO) Number:** 4740

**Specification Number:** 21471

**Name of Contractor:** FEDERAL EXPRESS CORP

**City Department:** PLANNING & DEVELOPMENT

**Title of Contract:** Developer will construct an approximately 120,000 sq foot sorting and distribution facility at 875 West Division

**Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):**

\$2,200,000 00

**PO Start Date:** 10/16/97

**PO End Date:** 7/31/19

**Brief Description of Work:** Developer will construct an approximately 120,000 sq foot sorting and distribution facility at 875 West Division

**Procurement Services Contact Person:** BARBARA SUTTON

**Vendor Number:** 1050038

**Submission Date:**

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FEDERAL EXPRESS CORPORATION REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF CHICAGO

AND

FEDERAL EXPRESS CORPORATION

7548487  
024X

This agreement was prepared by  
and after recording return to:  
Paul Davis, Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 511  
Chicago, IL 60602

**BOX 333-CTI**

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Exhibit C	*TIF-Funded Improvements
Exhibit D	*Redevelopment Plan
Exhibit E	Construction Contract
Exhibit F	Escrow Agreement
Exhibit G	*Permitted Liens
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Exhibit I	Approved Prior Expenditures
Exhibit J	Requisition Form
Exhibit K	Opinion of Developer's Counsel
Exhibit L	*Preliminary TIF Projection -- Real Estate Taxes

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

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This agreement was prepared by and  
after recording return to:  
Paul Davis, Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 511  
Chicago, IL 60602

#### FEDERAL EXPRESS CORPORATION REDEVELOPMENT AGREEMENT

This Federal Express Corporation Redevelopment Agreement (this "Agreement") is made as of this 16<sup>th</sup> day of October, 1997, by and between the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), and Federal Express Corporation, a Delaware corporation (the "Developer").

#### RECITALS

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

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (1992 State Bar Edition), as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "the City Council") adopted the following ordinances on July 10, 1996: (1) "An Ordinance of the City of Chicago, Illinois, Concerning the Approval of Tax Increment Redevelopment Plan for the Division-Hooker Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois, Concerning the Designation of the Division-Hooker Redevelopment Project Area as a Redevelopment Project Area Pursuant to Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois, Concerning the Adoption of Tax Increment Allocation Financing for the Division-Hooker Redevelopment Project Area" (the "TIF Adoption Ordinance"), (collectively referred to herein as the "TIF Ordinances"). The redevelopment project area (the "Redevelopment Area") is legally described in Exhibit A hereto.

D. The Project: The Developer has purchased (the "Acquisition") certain property located within the Redevelopment Area at 875 West Division Street and 800 West Haines Street, Chicago, Illinois 60622 and legally described on Exhibit B hereto (the "Property"), and, within the time frames set forth in Section 3.01 hereof, shall commence and complete construction of an approximately 120,000 square foot sorting and distribution facility (the "Facility") thereon. The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago Division-Hooker Redevelopment Project Area Tax Increment Allocation Finance Program Redevelopment Plan and Project (the "Redevelopment Plan") attached hereto as Exhibit D, as amended from time to time.

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

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

#### SECTION 1. RECITALS

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



## SECTION 2. DEFINITIONS

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

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

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

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

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

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

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

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

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

"Corrective Action Plan" shall mean that certain Revised Corrective Action Plan, dated April 8, 1996, prepared by the Developer with respect to the Property.

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

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

"Environmental Laws" shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in

force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago.

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

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

"Financial Statements" shall mean complete audited financial statements of the Developer prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods; provided, that the audited financial statements included in the Developer's annual report to shareholders may be used as the Financial Statements.

"First Disbursement" shall mean the first disbursement from the City subsequent to the Closing Date related to construction or development costs.

"General Contractor" shall mean the general contractors hired by the Developer pursuant to Section 6.01.

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

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into

a special tax allocation fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

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

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

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

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

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

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

"Prior Expenditure(s)" shall have the meaning set forth in Section 4.04(c) hereof.

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

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

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

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

"Survey" shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by

a surveyor registered in the State of Illinois, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility).

"Term of the Agreement" shall mean the period of time commencing on the Closing Date and ending on date that the Redevelopment Area is no longer in effect (through and including July, 2019).

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

"Title Company" shall mean Chicago Title and Trust Company.

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

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

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

### SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications: (i) commence construction no later than September 1, 1996; and (ii) complete construction and conduct business operations therein no later than December 1, 1997.

3.02 Scope Drawings and Plans and Specifications. Any Scope Drawings and Plans and Specifications to be used in connection with the Project have been delivered to DPD. Any subsequent proposed material changes to the Scope Drawings or Plans and Specifications shall be promptly delivered to DPD. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan as amended from time to time and all applicable federal, state and local laws, ordinances and regulations. The Developer shall submit all necessary documents to the City's Building Department,

Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budget. The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Twelve Million, Four Hundred Two Thousand, Six Hundred and Seventy-Two Dollars (\$12,402,672). The Developer hereby certifies to the City that: (a) it has Equity in an amount sufficient to pay for all Project Costs; and (b) the Project Budget is true, correct and complete in all material respects.

3.04 Change Orders. Any Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project, must be delivered promptly by the Developer to the City; provided, that any Change Orders relating to the following changes to the Project must be submitted by the Developer to DPD for DPD's prior written approval: (a) changes to the Facility reflecting a change in its basic use; (b) changes decreasing the square footage of the Facility; and (c) changes reflecting a delay in the completion of the Project. The City's approval or acceptance of a Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of Incremental Taxes which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer.

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

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

3.07 Progress Reports and Survey Updates. The Developer shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary. Once the Project has been completed, the Developer shall provide three (3) copies of an updated Survey to DPD if the Developer, in its discretion, decides to obtain an updated Survey.

3.08 Inspecting Agent or Architect. An independent agent or architect (other than the Developer's architect) approved by DPD shall be selected to act as the inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DPD, prior to requests for disbursement for costs related to the Project made by the Developer hereunder.

3.09 Barricades. Prior to commencing any construction requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations.

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

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

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

#### SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$12,402,672, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the Developer's own funds.

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

4.03 City Funds.

(a) Uses of City Funds. City Funds will be used to reimburse the Developer only for costs of TIF-Funded Improvements

that constitute Redevelopment Project Costs. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be reimbursed from City Funds for each line item therein, contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost; provided, that the Developer may allocate costs among line items as provided in Section 4.04(b). Subject to the provisions of Section 4.04(a) and the other provisions of this Agreement, the Developer may be reimbursed with City Funds in an amount equal to the entire amount available from time to time in the Division-Hooker Redevelopment Project Area TIF Fund. City Funds shall not be paid to the Developer hereunder prior to the issuance of a Certificate.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, the City hereby agrees to reimburse the Developer for the costs of the TIF-Funded Improvements from Incremental Taxes deposited in the Division-Hooker Redevelopment Project Area TIF Fund (the "City Funds"); provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed at any time the lesser of Two Million Two Hundred Thousand Dollars (\$2,200,000) or nineteen and one-half percent (19.5%) of the actual total Project costs; and provided further, that the City Funds to be derived from Incremental Taxes shall be available to pay costs related to TIF-Funded Improvements only so long as the amount of the Incremental Taxes deposited into the Division-Hooker Redevelopment Project Area TIF Fund shall be sufficient to pay for such costs. The Developer acknowledges and agrees that the City's obligation to pay for TIF-Funded Improvements is contingent upon the fulfillment of the condition set forth above.

#### 4.04 City Fee, Line Items and Prior Expenditures.

(a) City Fee. The City may be paid the sum of Sixty Thousand Dollars (\$60,000) from the Division-Hooker Redevelopment Project Area TIF Fund for payment of costs incurred by the City for the administration and monitoring of the Project. Such fee shall, in the discretion of the City, be paid to the City prior to any payment of City Funds to the Developer hereunder; provided, that such fee may be paid only from funds available from the first full year of Incremental Taxes or any year thereafter.

(b) Allocation Among Line Items. Costs and expenses related to TIF-Funded Improvements may be transferred from one line item to another, without the prior written consent of DPD.

(c) Prior Expenditures. Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, shall be

considered previously contributed Equity hereunder ("Prior Expenditures").

4.05 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.05 hereof, the Developer shall be solely responsible for such excess costs, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds.

4.06 Requisition Form.

(a) On or prior to each November 30 (or such other date as the parties may agree to), beginning in 1997 and continuing throughout the earlier of (i) the Term of the Agreement or (ii) the date that the Developer has been reimbursed in full under this Agreement, the Developer shall provide DPD with a Requisition Form, along with the documentation described therein.

**SECTION 5. CONDITIONS PRECEDENT**

The following conditions shall 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. The Developer shall have submitted to DPD, and DPD shall have approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

5.02 Scope Drawings and Plans and Specifications. The Developer shall have submitted to DPD the Scope Drawings and Plans and Specifications accordance with the provisions of Section 3.02 hereof.

5.03 Other Governmental Approvals. Not less than five (5) days prior to the commencement of the Project, the Developer shall have secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and shall submit evidence thereof to DPD.

5.04 Annual Report. The Developer shall have furnished to the City a copy of its most recent Annual Report to Stockholders delivered to its stockholders in connection with the most recent annual meeting of stockholders of the Developer.

5.05 Acquisition and Title. On the Closing Date, the Developer shall furnish the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Developer as the named insured. The Title Policy shall be dated as of the Closing Date and shall evidence the recording of this Agreement pursuant to the provisions of Section 8.18 hereof. The



Developer shall provide to DPD, prior to the Closing Date, certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. Not less than five (5) business days prior to the Closing Date, the Developer, at its own expense, shall have provided the City with current searches under the Developer's name as follows:

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

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

5.07 City Property. Prior to or on the Closing Date, the Developer shall have furnished the City with evidence of the conveyance by the City of certain property located within the Redevelopment Area; provided, that this provision shall not be deemed to obligate the City to convey such property.

5.08 Insurance. The Developer, at its own expense, shall have insured the Property in accordance with Section 12 hereof. At least five (5) business days prior to the Closing Date, certificates required pursuant to Section 12 hereof evidencing the required coverages shall have been delivered to DPD.

5.09 Opinion of the Developer's Counsel. On the Closing Date, the Developer shall furnish the City with an opinion of counsel, substantially in the form attached hereto as Exhibit K, with such changes as may be required by or acceptable to Corporation Counsel. If the Developer has engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in Exhibit K hereto, such opinions may be made by such special counsel in reliance upon an opinion from the general corporate counsel of the Developer.

5.10 Financial Statements. Not less than thirty (30) days prior to the Closing Date, the Developer shall have provided Financial Statements to DPD for its 1993-1995 fiscal years.

5.11 Documentation. The Developer shall have provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters.

5.12 Environmental. Not less than thirty (30) days prior to the Closing Date, the Developer shall have provided DPD with copies of the Corrective Action Plan.

5.13 Corporate Documents. The Developer shall provide a copy of its Articles or Certificate of Incorporation containing the original certification of the Secretary of State of its state of incorporation; certificates of good standing from the Secretary of State of its state of incorporation and the State of Illinois; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such other corporate documentation as the City may request.

5.14 Litigation. The Developer shall provide to Corporation Counsel and DPD, at least ten (10) business days prior to the Closing Date, a description of all pending or threatened litigation or administrative proceedings involving the Developer which has been included in the Developer's Annual Report on Form 10-K filed with the Securities Exchange Commission with respect to the most recent fiscal year of the Developer, or any Form 8-K so filed since the end of such fiscal year.

5.15 Preconditions of Disbursement. Prior to the First Disbursement of City Funds hereunder, the Developer shall submit a Requisition Form to DPD, along with documentation, satisfactory to DPD in its sole discretion, establishing (i) that all costs relating to the Project for which reimbursement is or will be requested are Redevelopment Project Costs and (ii) that the Developer has paid for all such costs. DPD shall retain the right to approve or reject, in its sole discretion, the designation of any cost in the Project Budget or the Requisition Form as (i) a TIF-Funded Improvement or (ii) a part of the actual costs of the Project. Without limiting the previous sentence, DPD may reject the following costs, without limitation, of all or any portion of the Project:

(i) any costs of interest paid by the Developer as a part of total Project costs or TIF-Funded Improvements;

(ii) costs of corporate overhead not directly associated with the execution of the Project as a part of total Project costs or TIF-Funded Improvements; or

(iii) costs of acquisition of new equipment as a part of TIF-Funded Improvements, unless it otherwise qualifies as a redevelopment project cost (as defined in the Act) in connection with rehabilitation, or as a part of total Project costs.

Delivery by the Developer to DPD of any request of disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

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

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

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

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

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

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

The Developer shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the TIF Ordinances and/or this Agreement.

## **SECTION 6. AGREEMENTS WITH CONTRACTORS**

6.01 General Contractor and Subcontractors. The Developer has solicited bids from qualified contractors eligible to do business with the City of Chicago, and has selected a General Contractor for the construction portion of the Project, a General Contractor for the environmental remediation portion of the Project, and another General Contractor to perform certain laboratory testing in connection with the environmental remediation portion of the Project. The Developer shall submit copies of the

Construction Contract and any other contracts with General Contractors relating to the Project to DPD in accordance with Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof. The Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until all requisite permits have been obtained.

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

6.03 Performance and Payment Bonds. Prior to commencement of construction of any work in the public way in connection with the Project, the Developer shall require that the General Contractor be bonded for its performance and payment for such work by sureties having an AA rating or better using American Institute of Architect's Form No. A311 or its equivalent. The City shall be named as obligee or co-obligee on such bond.

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

6.05 Local Contractors and Vendors. The Developer shall use its best efforts to ensure that all contracts entered into in connection with the Project for work done, services provided or materials supplied shall be let (by the Developer, the General Contractor or any subcontractor) to persons or entities whose main office and place of business is located within the City of Chicago. The Construction Contract and each contract between the General Contractor and any subcontractor shall contain a provision to this effect.

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

## SECTION 7. COMPLETION OF CONSTRUCTION

7.01 Certificate of Completion of Construction. Upon completion of the construction of the Project in accordance with the terms of this Agreement, and upon the Developer's written request, DPD shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to the Developer's written request for a Certificate within thirty (30) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures.

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

Those covenants specifically described at Sections 8.02, 8.06 and 8.19 as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to Section 18.15 of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

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

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

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

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

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

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

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

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

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

(d) unless otherwise permitted pursuant to the terms of this Agreement (including Section 8.01(j) and (k)), the Developer shall maintain good, indefeasible and merchantable fee simple title to the Property free and clear of all liens (except for the Permitted Liens and non-governmental charges that the Developer is contesting in good faith pursuant to Section 8.15 hereof);

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

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

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

(h) the Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound which would materially impair its ability to perform under this Agreement;

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

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

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

fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget.

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

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

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

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

8.06 Job Creation and Retention; Covenant to Remain in the City. Not less than three hundred thirty (330) full-time equivalent, permanent jobs shall be retained by the Developer at the Project within six months of the completion thereof, and such jobs shall be retained or created by the Developer at the Facility through the date of termination of the Redevelopment Area except as adjustments may be necessary to maintain the Facility's competitiveness in the business of the Developer. The Developer hereby covenants and agrees to maintain its operations within the City of Chicago at the Facility through the date of termination of the Redevelopment Area. The covenants set forth in this Section shall run with the land and be binding upon any transferee.



8.07 Employment Opportunity. The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in Section 10 hereof.

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

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

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

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

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

8.13 Financial Statements. The Developer shall provide to DPD Financial Statements for each fiscal year for the Term of the Agreement.

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

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

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

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

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

8.16 Developer's Liabilities. The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder. The Developer shall

immediately notify DPD of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement.

8.17 Compliance with Laws. To the best of the Developer's knowledge, after diligent inquiry, and except for any violations of Environmental Laws which are to be remediated pursuant to the Corrective Action Plan, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, the Developer shall provide evidence satisfactory to the City of such compliance. The Developer shall put into effect such provisions of the Corrective Action Plan as are necessary to remediate all remaining violations of Environmental Laws described therein.

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

8.19 Real Estate Provisions.

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

(ii) Right to Contest. The Developer shall have the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. The Developer's right to challenge real estate

taxes applicable to the Property is limited as provided for in Section 8.19(b) below; provided, that such real estate taxes must be paid in full when due, whether or not any dispute regarding such taxes is instituted prior to or after payment of such taxes is due. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to DPD of the Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

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

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

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

(b) Real Estate Taxes.

(i) Acknowledgement of Real Estate Taxes. The Developer agrees that (A) Exhibit L sets forth the specific improvements which will generate the fair market values, assessments, equalized assessed values and taxes shown thereon; and (B) the real estate taxes anticipated to be generated and derived from the respective portions of the Property and the Project for the years shown are fairly and accurately indicated in Exhibit L.

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

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

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

(v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.19 are covenants running with the land and this Agreement shall be recorded by the Developer as a memorandum thereof, at the Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon the Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Developer agrees that any sale, lease, conveyance, or transfer

of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions.

(c) Insurance. In addition to the insurance required pursuant to Section 12 hereof, the Developer shall procure and maintain the following insurance:

(i) Prior to the execution and delivery of this Agreement and during construction of the Project, All Risk Property Insurance in the amount of the full replacement value of the Property above the foundation.

(ii) Post-construction, throughout the Term of the Agreement, All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Property above the foundation. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable.

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

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

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

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

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

10.01 Employment Opportunity. The Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer operating on the Property (collectively, with the Developer, the "Employers" and individually an "Employer") to agree, that during the Term of this

Agreement with respect to Developer, during the period of any other party's provision of services in connection with the construction of the Project and during the period that any such other party is an occupant of the Property:

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

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

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

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the

responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

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

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

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

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

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

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

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DPD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll.



The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

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

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

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

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

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or

other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

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

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

a. Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE" Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 10.03, during the course of the Project, at least the following percentages of the total Project Budget (less the acquisition price of the Property or any portion thereof, if any) shall be expended for contract participation by MBEs or WBEs:

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

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

c. Consistent with Section 2-92-440, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 10.03. The Developer or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for

the voluntary use of MBEs or WBEs in its activities and operations other than the Project.

d. The Developer shall deliver quarterly reports to DPD during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include inter alia the name and business address of each MBE and WBE solicited by the Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DPD in determining the Developer's compliance with this MBE/WBE commitment. DPD shall have access to the Developer's books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account in accordance with Section 14 of this Agreement, on five (5) business days' notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

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

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

g. Prior to the commencement of the Project, the Developer, the General Contractor and all major subcontractors shall be required to meet with the monitoring staff of DPD with regard to the Developer's compliance with its obligations under this Section 10.03. During this meeting, the Developer shall demonstrate to DPD its plan to achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by DPD. During the Project, the Developer shall submit the documentation required by this Section 10.03 to the monitoring staff of DPD. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that the Developer is not complying with its obligations hereunder shall, upon the delivery of written notice to the Developer, be deemed an Event of Default hereunder. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) withhold any further payment of any City Funds to the

Developer or the General Contractor, or (2) seek any other remedies against the Developer available at law or in equity.

#### SECTION 11. ENVIRONMENTAL MATTERS

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

Without limiting any other provisions hereof, the Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Developer: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from all or any portion of the Property, or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

#### SECTION 12. INSURANCE

The Developer shall procure and maintain, or cause to be procured and maintained, at its sole cost and expense, at all times throughout the Term of this Agreement (or during the construction period as specified at (b) below) and until each and every obligation of the Developer contained in the Agreement has been fully performed, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations under this Agreement, whether performed by the Developer, the General Contractor or any subcontractor:

- (a) Prior to Execution and Delivery of this Agreement: At least ten (10) business days prior to the execution of this Agreement, the Developer shall procure and maintain, or cause to be procured and maintained, the following kinds and amounts of insurance:

(i) Workers' Compensation and Occupational Disease Insurance

Workers' Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Illinois or any other applicable jurisdiction, covering all employees who are to provide a service under or in connection with this Agreement, and employer's liability coverage, with limits of not less than \$100,000.00 for each accident or illness. Upon receipt of evidence of such coverage in a form acceptable to the Risk Management Office of the City, the Developer may meet this obligation through self insurance.

(ii) Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000.00 per occurrence, combined single limit, for bodily injury, personal injury and property damage liability. Coverage extensions shall include the following: all premises and operations, products/completed operations, independent contractors, cross liability, personal injury with no exclusion pertaining to employment and contractual obligations, and contractual liability (with no limitation endorsement). The City of Chicago, its employees, elected officials, agents and representatives are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

(b) Construction: Prior to the construction of any portion of the Project, the Developer shall procure and maintain, or cause to be procured and maintained, the following kinds and amounts of insurance:

(i) Workers' Compensation and Occupational Disease Insurance

Workers' Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Illinois or any other applicable jurisdiction, covering all employees who are to provide a service under or in connection with this Agreement and employer's liability coverage with limits of not less than \$500,000.00 for each accident or illness. Upon receipt of evidence of such coverage in a form acceptable to the Risk Management Office of the

City, the Developer may meet this obligation through self insurance.

(ii) Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance or equivalent with limits of not less than \$5,000,000.00 per occurrence, combined single limit, for bodily injury, personal injury and property damage liability. Coverage extensions shall include the following: all premises and operations, products/completed operations (for a minimum of two (2) years following completion of construction of the Project) explosion, collapse, underground, independent contractors, cross liability, personal injury with no exclusion pertaining to employment and contractual obligations, and contractual liability (with no limitation endorsement). The City of Chicago, its employees, elected officials, agents and representatives are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

(iii) Railroad Protective Liability Insurance

When, in connection with this Agreement, any work is to be done adjacent to or on property owned by a railroad or public transit entity, the Developer shall procure and maintain, or cause to be procured and maintained, with respect to the operations that the Developer, the General Contractor or any subcontractor shall perform, Railroad Protective Liability Insurance in the name of such railroad or public transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence, combined single limit, 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.

(iv) Automobile Liability Insurance

When any motor vehicles (owned, leased, borrowed or otherwise) are used by the Developer, the General Contractor or any subcontractor for work to be performed in connection with this Agreement, the Developer shall procure and maintain, or cause to be procured and maintained, Comprehensive

Automobile Liability Insurance with limits of not less than \$2,000,000.00 per occurrence combined single limit, for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(v) All Risk Builders Risk Insurance

When the Developer, the General Contractor or any subcontractor undertakes any construction, including improvements, betterments, and/or repairs, the Developer, the General Contractor or any such subcontractor shall provide All Risk Blanket Builder's Risk Insurance to cover the materials, equipment, machinery and fixtures that are or will be part of the permanent facilities. Coverage extensions shall include boiler and machinery, flood including surface water backup, and collapse.

(vi) Professional Liability

When any architects, engineers, construction managers or consultants of any kind perform work in connection with this Agreement, Professional Liability insurance covering acts, errors or omissions shall be maintained with limits of not less than \$1,000,000.00. Coverage extensions shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Project. A claims-made policy that is not renewed or replaced must have an extended reporting period of two (2) years.

(vii) Valuable Papers Insurance

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

(viii) Contractors' Pollution Liability Insurance

When any environmental remediation work is undertaken by the Developer, the General Contractor or any subcontractor in connection with this Agreement, Contractors' Pollution Liability

Insurance shall be procured with limits of not less than \$1,000,000 covering all construction and related work undertaken in connection with this Agreement. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis. The Developer, the General Contractor and any subcontractor shall comply with any additional insurance requirements that are stipulated by the Interstate Commerce Commission's Regulations, Title 49 of the Code of Federal Regulations, Department of Transportation; Title 40 of the Code of Federal Regulations, Protection of the Environment and any other federal, state or local regulations concerning the removal and transportation of Hazardous Materials.

(c) Other Provisions

(i) Delivery of certificates to City: At least five (5) business days prior to the Closing Date (unless otherwise specified) the Developer shall furnish the following certificates to DPD at City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602:

--Original certificates of insurance evidencing the required coverage, showing the City as a certificate holder and, if applicable, loss payee or additional insured, to be in force on the date of execution of this Agreement, and renewal certificates of insurance or other evidence of renewal, if the coverages have an expiration or renewal date occurring during the Term of the Agreement. Each certificate of insurance shall provide that the City is to be given thirty (30) days prior written notice in the event coverage is substantially changed, cancelled or not renewed; and

--Original City of Chicago Insurance Certificate of Coverage Form (or such other form as may be acceptable to DPD).

The receipt of the required certificates by DPD does not constitute an agreement by the City that the insurance requirements of this Agreement have been fully met or that the insurance policies indicated on the certificates are in compliance with all requirements hereunder. The failure of the City to receive such certificates or to receive certificates that fully conform to the requirements of this Agreement shall not be deemed to be a waiver by the City of any of the insurance requirements set forth herein.



(ii) Receipt by the Developer of policies or certificates: The Developer shall advise all insurers of the insurance requirements set forth in this Agreement, and the receipt by the Developer of policies or certificates that do not conform to these requirements shall not relieve the Developer of its obligation to provide the insurance as set forth in this Agreement or required by law. Failure to comply with the insurance provisions of this Agreement constitutes an Event of Default hereunder, and the City is entitled to exercise all remedies with respect thereto. The Developer expressly understands and agrees that any coverages and limits furnished by Developer shall in no way limit the Developer's liability and responsibilities specified within this Agreement or as required by law.

(iii) The Developer shall require the General Contractor and all subcontractors to carry the insurance required herein, or alternatively, the Developer may provide the coverage on behalf of the General Contractor or any subcontractor, and if so, the evidence of insurance submitted shall so stipulate.

(iv) The Developer agrees, and shall cause its insurers and the insurers of its General Contractor and each subcontractor engaged after the date hereof in connection with the Project to agree, that all such insurers shall waive their rights of subrogation against the City.

(v) The limitations set forth in the indemnification provisions in Section 13 hereof, or any limitations on indemnities that may apply as a matter of law, shall in no way limit, reduce or otherwise affect the amounts or types of insurance required under this Agreement.

(vi) The Developer and not the City is responsible for meeting all of the insurance requirements under this Agreement and for the Project. Any insurance or self insurance programs maintained by the City shall apply in excess of and not contribute with insurance required to be provided by the Developer, General Contractor or any subcontractor under this Agreement.

Any and all deductibles or self-insured retentions on the required insurance coverages shall be borne by the Developer, General Contractor or subcontractor who is the insured under such policy, and shall not be borne by the City.

If the Developer, the General Contractor or any subcontractor desires additional coverage, higher limits of liability or other modifications for its own

protection, such person or entity shall be responsible for the acquisition and cost of such additional protection.

(vii) The City of Chicago Risk Management Department maintains the right to modify or delete the insurance requirements set forth in this Agreement so long as such action does not, without the Developer's prior written consent, increase such requirements beyond that which is reasonably customary at such time.

### SECTION 13. INDEMNIFICATION

The Developer agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with (i) the Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement, or (ii) the Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement, or (iii) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by the Developer or its agents, employees, contractors or persons acting under the control or at the request of the Developer or (iv) the Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto.

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

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

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

## SECTION 15. DEFAULT AND REMEDIES

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

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

(b) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity if such failure may have a material adverse effect on the Developer's ability to perform its obligations under this Agreement;

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

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

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

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

(g) the entry of any judgment or order against the Developer which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution, the effect of which would materially adversely affect the ability of the Developer to perform its obligations under this Agreement;

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

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

For purposes of Sections 15.01(h) and 15.01(i) hereof, a person with a material interest in the Developer shall be one owning in excess of thirty-three percent (33%) of the Developer's issued and outstanding shares of stock.

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

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

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

#### SECTION 16. MORTGAGING OF THE PROJECT

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

(a) In the event that a Mortgagee or any other party shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City shall attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement (subject to the limitations set forth in Section 18.15) and such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) A New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD being required.

#### SECTION 17. NOTICE

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

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

With Copies To: City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 511  
Chicago, IL 60602

If to the Developer: Federal Express Corporation  
1991 Corporate Avenue, Suite 600  
Memphis, Tennessee 38132  
Attention: Managing Director  
Real Estate and Airport  
Relations

With Copies To: Madigan & Getzendanner  
30 North LaSalle Street  
Chicago, Illinois 60602-2507  
Attention: Vincent J. Getzendanner, Jr.

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

#### SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended without the prior written consent of the City.

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

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

from the City or any successor in interest or on any obligation under the terms of this Agreement.

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

18.05 Waiver. Waiver by the City or the Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer in writing.

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

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

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

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

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

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

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

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

18.14 Approval. Wherever this Agreement provides for the approval or consent of the City or DPD, or any matter is to be to the City's or DPD's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City or DPD in writing and in its sole discretion.

18.15 Assignment. Except as otherwise provided hereunder, the Developer may sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City; provided, that no assignee or transferee shall have the right to obtain City Funds hereunder without the written consent of the City. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.19 (Real Estate Provisions) and 8.20 (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

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

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

18.19 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House

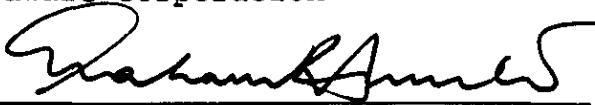


of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the reimbursement obligations of the City set forth herein.

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

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

FEDERAL EXPRESS CORPORATION,  
a Delaware corporation

By: 

Its: VP

APPROVED  
AS TO LEGAL FORM  
RJ Kwoka 971012  
LEGAL DEPT.

CITY OF CHICAGO

By: \_\_\_\_\_

\_\_\_\_\_  
Commissioner, Department  
of Planning and Development

STATE OF ILLINOIS    )  
                                  )    ss  
COUNTY OF COOK        )

I, DAVID G. CHRISTIE, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that GRAHAM R. SMITH, personally known to me to be the VICE PRESIDENT of Federal Express Corporation, a Delaware corporation (the "Corporation"), 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 them by the Board of Directors of the Corporation, as his/her free and voluntary act and as the free and voluntary act of the Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 13<sup>th</sup> day of October, 1997.

David G. Christie  
Notary Public

My Commission Expires 9/28/99

(SEAL)

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

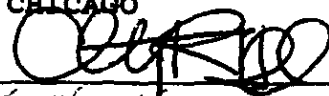
**FEDERAL EXPRESS CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF CHICAGO**

By: \_\_\_\_\_

  
\_\_\_\_\_  
Commissioner, Department

of Planning and Development *ect*

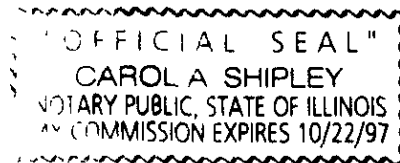
STATE OF ILLINOIS     )  
                                  )     ss  
COUNTY OF COOK        )

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

GIVEN under my hand and official seal this 16 th day of October, 1997.

Carol A. Shipley  
Notary Public

My Commission Expires 10/22/97



**EXHIBIT     A**

**Legal Description of the Area**

**All of Blocks 74 and 84, together with that part of vacated West Bliss Street lying adjoining to said Blocks, all taken as a tract, in Chicago Land Company's Resubdivision of Blocks 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74 and 84, together with Lot 1 in Block 50, all in Elston's Addition to Chicago, in the Southeast Quarter of Section 5, Township 39 North, Range 14 East of the Third Principal Meridan.**

**Also including all of North Hooker Street, westerly of and adjoining said Blocks 74 and 84, lying southeasterly of the north line of said Block 74 (being also the south line of West Division Street) extended west and northwesterly of a line 66 feet southeasterly of and parallel with the southerly line of said Block 84 (being also the southerly line of West Haines Street) extended west.**

**Also including all of West Haines Street, southerly of and adjoining aforesaid Block 84 lying southwesterly of the west line of North Halsted Street extended and northeasterly of the westerly line of North Hooker Street extended.**

**All in Cook County, Illinois.**

Exhibit B

Legal Description

PARCEL 1

ALL OF BLOCKS 74 AND 84, TOGETHER WITH THAT PART OF VACATED WEST BLISS STREET LYING ADJOINING TO SAID BLOCKS, ALL TAKEN AS A TRACT, IN CHICAGO LAND CO'S RESUBDIVISION OF BLOCKS 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74 AND 84; TOGETHER WITH LOT 1 IN BLOCK 50, ALL IN ELSTON'S ADDITION TO CHICAGO, IN THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND EXCEPTING FROM SAID DESCRIBED TRACT THAT PART OF LOTS 4 AND 5 IN BLOCK 84 OF SAID ELSTON'S ADDITION, LYING NORTHWESTERLY OF A LINE PARALLEL TO AND 10 33 FEET SOUTHEASTERLY OF, MEASURED AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE OF OGDEN AVENUE, AS EXTENDED, AND LYING NORTHEASTERLY OF A LINE AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE OF SAID OGDEN AVENUE AND INTERSECTING THE SOUTHEASTERLY LINE OF SAID OGDEN AVENUE AT A POINT WHICH IS 221.44 FEET NORTHEASTERLY MEASURED ON THE SOUTHEASTERLY LINE OF SAID OGDEN AVENUE, FROM ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF HOOKER STREET, IN COOK COUNTY, ILLINOIS

PARCEL 2

THAT PART OF LOTS 4 AND 5 IN BLOCK 84 IN CHICAGO LAND CO'S RESUBDIVISION OF BLOCKS 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74 AND 84; TOGETHER WITH LOT 1 IN BLOCK 50, ALL IN ELSTON'S ADDITION TO CHICAGO, IN THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS.

LYING NORTHWESTERLY OF A LINE PARALLEL TO AND 10 33 FEET SOUTHEASTERLY OF, MEASURED AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE OF OGDEN AVENUE, AS EXTENDED, AND LYING NORTHEASTERLY OF A LINE AT RIGHT ANGLES TO THE SOUTHEASTERLY LINE OF SAID OGDEN AVENUE AND INTERSECTING THE SOUTHEASTERLY LINE OF SAID OGDEN AVENUE AT A POINT WHICH IS 221.44 FEET NORTHEASTERLY MEASURED ON THE SOUTHEASTERLY LINE OF SAID OGDEN AVENUE, FROM ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF HOOKER STREET, IN COOK COUNTY, ILLINOIS

Exhibit C

TIF-FUNDED IMPROVEMENTS

<u>Line Item</u>	<u>Cost</u>
Seawall Reconstruction	\$1,061,800
Environmental Remediation	\$1,138,200
TOTAL	<u>\$2,200,000</u>



Exhibit D

**CITY OF CHICAGO**

**DIVISION-HOOKER REDEVELOPMENT PROJECT AREA  
TAX INCREMENT ALLOCATION FINANCE PROGRAM**

**REDEVELOPMENT PLAN AND PROJECT**

February, 1996

**CITY OF CHICAGO**

**Richard M. Daley  
Mayor**

**REDEVELOPMENT PLAN AND PROJECT FOR  
DIVISION-HOOKER REDEVELOPMENT PROJECT AREA  
TAX INCREMENT FINANCING PROGRAM**

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## **EXECUTIVE SUMMARY**

### **GOALS AND OBJECTIVES**

#### **General Goals:**

- **Improve the quality of life in Chicago by eliminating the influence of, as well as the manifestations of, both physical and economic blight in the Redevelopment Project Area.**
- **Provide sound economic development in the Redevelopment Project Area.**
- **Revitalize the Redevelopment Project Area to make it an important center contributing to the revitalization of the Goose Island Area.**
- **Create an environment within the Redevelopment Project Area which will contribute to the health, safety, and general welfare of the City, and preserve or enhance the value of properties in the Goose Island Area.**
- **Create suitable locations for industry.**
- **Create job opportunities.**

#### **Redevelopment Objectives:**

- **Reduce or eliminate those conditions which qualify the Redevelopment Project Area as a Blighted Area.**
- **Enhance the tax base of the City of Chicago and of the other taxing districts which extend into the Redevelopment Project Area by encouraging private investment in new industrial construction.**
- **Strengthen the economic well-being of the Redevelopment Project Area and the City by increasing business activity, taxable values, and job opportunities.**
- **Encourage the assembly of land into parcels functionally adaptable with respect to shape and size for industrial redevelopment needs and standards.**
- **Provide needed incentives to encourage improvements for new development efforts.**
- **Encourage the participation of minorities and women in the development of the Redevelopment Project Area.**

## **Development and Design Objectives**

- **Establish a pattern of land use activities arranged in compact, compatible groupings to increase efficiency of operation and economic relationships.**
- **Encourage coordinated development of parcels and structures in order to achieve efficient building design; unified off-street parking, trucking and service facilities; and appropriate access to nearby highways.**
- **Encourage a high-quality appearance of buildings, rights-of-way and open spaces, and encourage high standards of design.**
- **Encourage development of usable industrial space of all sizes.**

**Based upon surveys, inspections, research and analysis of the area by Louik/Schneider & Associates, Inc., the Redevelopment Project Area qualifies as a vacant "blighted area" as defined by the Act. The area is characterized by the presence of two of the blighting factors for vacant land as listed in the Act, impairing the sound growth of the taxing districts in the City of Chicago.**

### **Specifically:**

- **Of the seven blighting factors set forth in the law for vacant land, three are present in the Redevelopment Project Area, and only one is necessary for a determination of blight.**
- **The blighting factors which are present are reasonably distributed throughout the Redevelopment Project Area.**
- **All areas within the Redevelopment Project Area show the presence of blighting factors.**

## **REDEVELOPMENT PLAN**

The Redevelopment Plan proposes the development of a warehouse/distribution facility that will stimulate other industrial development by the private sector in the area outside of the proposed Redevelopment Project Area. In order to accomplish the City of Chicago's objective of stimulating industrial development on Goose Island, numerous public and private improvements need to take place. This Redevelopment Plan contains approximately 6.4 acres and will make approximately 4.5 acres of land available for new warehouse/distribution facility development.

The proposed Division-Hooker Redevelopment Project Area will require planning and programming of improvements. The funds for needed improvements are to come from incremental increases in tax revenues or from the City's issuance of bonds to be repaid from the incremental increase in tax revenues to be generated from the entire Redevelopment Project Area. The public improvements could include the reconstruction of Hooker and Haines Streets which will assist in the development of the Redevelopment Area.

The estimated redevelopment project costs are shown in Table 1. To the extent that municipal obligations have been issued to pay for such redevelopment project costs incurred prior to, but in anticipation of, the adoption of tax increment financing, the City shall be reimbursed for such redevelopment project costs. The total redevelopment project costs provide an upper limit on expenditures (exclusive of capitalized interest, issuance costs, administrative costs, interest and other financing costs). Within this limit, adjustments may be made in line items, including provision for capitalized interest and other cost of financing associated with the issuance of obligations, without amendment of this Redevelopment Plan. Additional funding in the form of State and Federal grants, and private developer contributions will be pursued by the City as means of financing improvements and facilities which are of a general community benefit.

TABLE 1

Program Action/Improvements

Seawall Reconstruction	\$1,100,000
Site preparation	250,000
Environmental remediation	1,280,000
Public Improvements	2,000,000
Job Training	100,000
Planning, legal, studies, etc.	75,000
<b>TOTAL PROJECT COST*</b>	<b>\$4,805,000</b>

\*Exclusive of capitalized interest, issuance costs, administrative costs, interest and other financing costs

Funds necessary to pay for redevelopment project costs and municipal obligations which have been issued or incurred to pay for such costs are to be derived principally from tax increment revenues and proceeds from municipal obligations which have as their revenue source tax increment revenue. To secure the issuance of these obligations, the City may permit the utilization of guarantees, deposits and other forms of security made available by private sector developers.

The tax increment revenue which will be used to fund tax increment obligations and redevelopment project costs shall be the incremental real property tax revenues. Incremental real property tax revenue is attributable to the increase in the current equalized assessed value

of each taxable lot, block, tract or parcel of real property in the Redevelopment Project Area over and above the initial equalized assessed value of each such property in the Redevelopment Project Area. Other sources of funds which may be used to pay for redevelopment costs and obligations issued or incurred, the proceeds of which are used to pay for such costs, are land disposition proceeds, state and federal grants, investment income, and such other sources of funds and revenues as the municipality may from time to time deem appropriate.

### **Issuance of Obligations**

To finance redevelopment costs a municipality may issue obligations secured by the anticipated tax increment revenue generated within the TIF Redevelopment Area.

Revenues shall be used for the scheduled and/or early retirement of obligations, and for reserves, bond sinking funds and redevelopment project costs, and, to the extent that real property tax increment is not used for such purposes, shall be declared surplus and shall then become available for distribution annually to taxing districts in the Redevelopment Project Area in the manner provided by the Act.

### **Most Recent Equalized Assessed Valuation of Properties in the Redevelopment Project Area**

The total 1994 equalized assessed valuation for the entire Redevelopment Project Area is \$380,624. This equalized assessed valuation is subject to final verification by Cook County. After verification, the County Clerk of Cook County, Illinois will certify the amount, and this amount will serve as the "Initial Equalized Assessed Valuation."

### **Anticipated Equalized Assessed Valuation**

By the year 1998, when it is estimated that all the anticipated private development will be completed and fully assessed, the estimated equalized assessed valuation of real property within the Redevelopment Project Area is estimated at between \$2,400,000 and \$3,400,000. These estimates are based on several key assumptions, including: 1) all industrial development, the project, will be completed in 1998; 2) the market value of the anticipated developments will increase following completion of the redevelopment activities described in the Redevelopment Project and Plan; 3) the most recent State Multiplier of 2.1135 as applied to 1994 assessed values will remain unchanged and 4) for the duration of the project the tax rate for the entire Redevelopment Project Area is assumed to be the same and will remain unchanged from the 1994 level.



## INTRODUCTION

The Division-Hooker Redevelopment Project Area is located approximately 2 miles northwest of Chicago's Central Business District on Goose Island. The Redevelopment Project Area contains approximately 6.4 acres. The Redevelopment Project Area is bounded on the north by Division Street, on the east by the North Branch Canal, on the south by Haines Street and on the west by Hooker Street. Division Street provides the major access to the Redevelopment Project Area. The Redevelopment Project Area is located in an area of Chicago that has excellent transportation access. The Kennedy Expressway (I-90 and I-94) is located one-half mile west of the Redevelopment Project Area. The Dan Ryan and Eisenhower Expressways (I-90, I-94 and I-290) are located less than three miles south and the Tri-State Tollway (I-294) and O'Hare Airport are less than 16 miles northwest of the Redevelopment Project Area via the Kennedy Expressway. This transportation network offers potential users of the Redevelopment Area easy access to the entire Chicago Metropolitan Area. The location and boundaries of the Redevelopment Project Area are shown on Map 1, Project Boundary.

The Division-Hooker Redevelopment Project Area is located on Goose Island which is primarily an industrial area. The Redevelopment Project Area is poorly maintained and under-utilized. It contains considerable areas of debris including cinders, coal, metallic slag, bricks, concrete and wood. The Redevelopment Project Area is free of any improvements. The previous building improvements were removed in January, 1990 due to their advanced state of decay. The Redevelopment Project Area is bounded on all four sides by a dilapidated chain link fence. There are abandoned railroad tracks adjacent to the Redevelopment Project Area on the west. The Redevelopment Project Area is at grade except where Division Street rises to the bridge level over the North Branch Canal. The entire area is classified as a Zone C flood area which is characterized as an area of minimal flooding by the National Flood Insurance Program. Most of the seawall along the North Branch Canal is in poor condition. Goose Island and most of the land in the surrounding area contains primarily heavy manufacturing uses or vacant industrial parcels. This entire area has been an industrial area dating back to the 1850's when it was incorporated into the City of Chicago. While a few of the older industrial buildings in the area

have been rehabilitated, only one new industrial facility has been constructed in the last twenty years. (See Map 2)

The purpose of the Redevelopment Plan is to create a mechanism to allow for the development of a warehouse/distribution center. The development of this center is expected to encourage economic revitalization within the community and surrounding area.

#### Tax Increment Allocation Redevelopment Act.

An analysis of conditions within this area indicates that it is appropriate for designation as a redevelopment project, utilizing the State of Illinois tax increment financing legislation. The area is characterized by conditions which warrant the designation as a "blighted area" within the definitions set forth in the Tax Increment Allocation Redevelopment Act (hereafter referred to as the "Act"). The Act is found in 65 ILCS 5/11-74-1 et seq., as amended.

The Act provides a means for municipalities, after the approval of a "Redevelopment Plan and Project" to redevelop blighted areas by pledging the increase in tax revenues generated by public and private redevelopment in order to pay for the up front costs which are required to stimulate such private investment in new redevelopment and rehabilitation. Municipalities may issue obligations to be repaid from the stream of real property tax increments that occur within the tax increment financing district.

The property tax increment revenue is calculated by determining the difference between the initial equalized assessed value (the Certified EAV Base) for all real estate located within the district and the current year EAV. Any increase in EAV is then multiplied by the current tax rate, which determines the incremental real property tax.

The Division-Hooker Redevelopment Area Project and Plan (hereafter referred to as the "Redevelopment Plan") has been formulated in accordance with the provision of the Act. It is a guide to all proposed public and private action in the Redevelopment Project Area. In addition

to describing the objectives of redevelopment, the Redevelopment Plan sets forth the overall program to be undertaken to accomplish these objectives. This program is the "Redevelopment Project".

This Redevelopment Plan also specifically describes the Division-Hooker Tax Increment Redevelopment Project Area (hereafter referred to as the "Redevelopment Project Area"). This area meets the eligibility requirement of the Act. The Redevelopment Project Area boundaries are described in Section II of the Redevelopment Plan and shown in Map 1, Boundary Map.

After its approval of the Redevelopment Plan, the City Council then formally designates the Redevelopment Project Area.

*The purpose of this Redevelopment Plan is to ensure that new development occurs:*

1. On a coordinated rather than a piecemeal basis to ensure that the land-use, vehicular access, parking, service and urban design systems will meet modern-day principles and standards.
2. On a reasonable, comprehensive and integrated basis to ensure that blighting factors are eliminated.
3. Within a reasonable and defined time period.

Revitalization of the Redevelopment Project Area is a large and complex undertaking and presents challenges and opportunities commensurate to its scale. The success of this effort will depend to a large extent on the cooperation between the private sector and agencies of local government. The adoption of the Redevelopment Plan makes possible the implementation of a logical program to stimulate redevelopment in the Redevelopment Project Area -- an area which cannot reasonably be anticipated to be developed without the adoption of this Redevelopment Plan. Public investments, will create the appropriate environment to attract the investment required for the rebuilding of the area.

Successful implementation of the Redevelopment Plan and Project requires that the City of Chicago take full advantage of the real estate tax increments attributed to the Redevelopment Project as provided in accordance with the Act. The Redevelopment Project Area would not be reasonably developed without the use of such incremental revenues.

## **REDEVELOPMENT PROJECT AREA AND LEGAL DESCRIPTION**

The Division-Hooker Redevelopment Project Area is located approximately 2 miles northwest of Chicago's Central Business District on Goose Island. The Redevelopment Project Area contains approximately 6.4 acres. The Redevelopment Project Area is bounded on the north by Division Street, on the east by the North Branch Canal, on the south by Haines Street and on the west by Hooker Street. Division Street provides the major access to the Redevelopment Area. The Division-Hooker Redevelopment Project Area contains only those contiguous parcels of real property that are expected to be substantially benefitted by the Redevelopment Plan.

The legal description of the Division-Hooker Redevelopment Project Area is as follows:

All of Blocks 74 and 84, together with that part of Vacated West Bliss Street lying adjoining to said Blocks, all taken as a tract, in Chicago Land Company's Re-subdivision of Blocks 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74 and 84, together with Lot 1 in Block 50, all in Elston's Addition to Chicago, in the Southeast Quarter of Section 5, Township 39 North, Range 14 East of the Third Principal Meridian.

Also including all of N. Hooker St., westerly of and adjoining said Blocks 74 and 84, lying southeasterly of the north line of said Block 74 (being also the south line of W. Division St.) extended west and northwesterly of a line 66 feet southeasterly of and parallel with the southerly line of said Block 84 (being also the southerly line of W. Haines St.) extended west.

Also including all of W. Haines St., southerly of and adjoining aforesaid Block 84 lying southwesterly of the west line of N. Halsted St. extended and northeasterly of the westerly line of N. Hooker St. extended.

All in Cook County, Illinois.

## **REDEVELOPMENT PROJECT AREA GOALS AND OBJECTIVES**

Investment in new development is essential in the Division-Hooker Redevelopment Project Area. Development efforts in the Redevelopment Project Area will strengthen the entire City through environmental improvements, an increased tax base and additional employment opportunities.

This section of the Redevelopment Plan identifies the goals and objectives of the Redevelopment Project Area. A latter section of the Redevelopment Plan identifies more specific programs which the City plans to undertake in achieving the redevelopment goals and objectives which have been identified.

### **General Goals:**

- **Improve the quality of life in Chicago by eliminating the influence of, as well as the manifestations of, both physical and economic blight in the Redevelopment Project Area.**
- **Provide sound economic development in the Redevelopment Project Area.**
- **Revitalize the Redevelopment Project Area to make it an important center contributing to the revitalization of the Goose Island area.**
- **Create an environment within the Redevelopment Project Area which will contribute to the health, safety, and general welfare of the City, and preserve or enhance the value of properties in the Goose Island Area.**
- **Create suitable locations for industry.**
- **Create job opportunities.**

### **Redevelopment Objectives:**

- **Reduce or eliminate those conditions which qualify the Redevelopment Project Area as a Blighted Area.**
- **Enhance the tax base of the City of Chicago and of the other taxing districts which extend into the Redevelopment Project Area by encouraging private investment in industrial new construction.**

- **Strengthen the economic well-being of the Redevelopment Project Area and the City by increasing business activity, real estate values, and job opportunities.**
- **Encourage the assembly of land into parcels functionally adaptable with respect to shape and size for industrial redevelopment needs and standards.**
- **Provide needed incentives to encourage improvements for new development efforts.**
- **Encourage the participation of minorities and women in the development of the Redevelopment Project Area.**

#### **Development and Design Objectives**

- **Establish a pattern of land use activities arranged in compact, compatible groupings to increase efficiency of operation and economic relationships.**
- **Encourage coordinated development of parcels and structures in order to achieve efficient building design; unified off-street parking, trucking and service facilities; and appropriate access to nearby highways.**
- **Encourage a high-quality appearance of buildings, rights-of-way and open spaces, and encourage high standards of design.**
- **Encourage development of usable industrial space of all sizes.**

## **BLIGHTED AREA CONDITIONS EXISTING IN THE REDEVELOPMENT PROJECT AREA**

Based upon surveys, inspections, research and analysis of the area by Louik/Schneider & Associates, Inc. the Redevelopment Project Area qualifies as a "blighted area" as defined by the Act. The area is characterized by the presence of two of the blighting factors for vacant land as listed in the Act, impairing the sound growth of the taxing districts in this area of the City. Specifically:

- Of the seven blighting factors set forth in the law for vacant land, three are present in the Redevelopment Project Area.
  - The blighting factors which are present are reasonably distributed throughout the Redevelopment Project Area.
  - All areas within the Redevelopment Project Area show the presence of blighting factors.
1. **A combination of 2 or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; flooding on all or part of such vacant land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land**

The Redevelopment Project Area exhibits: a) obsolete platting; and b) deterioration of structures or site improvements in neighboring areas adjacent to the vacant land.

2. **The area immediately prior to becoming vacant qualified as a blighted improved area.**

Prior to becoming vacant land, the Redevelopment Project Area had been utilized by a number of different companies. The Redevelopment Project Area



prior to the demolition of the improvements in January, 1990 exhibited the following factors: Age, Dilapidation, Obsolescence, Detenoration, Presence of structures below minimum code standards, Excessive vacancies, Deleterious land-use or lay-out, Depreciation of physical maintenance and Lack of community planning.

3. **The area consists of an unused disposal site, containing earth, stone, building debris or similar material, which were removed from construction, demolition, excavation or dredge sites.**

The Redevelopment Project Area is poorly maintained and is under-utilized. It contains considerable areas of building demolition debris including cinders, coal, metallic slag, bricks, concrete and wood. Prior to becoming vacant land, the Redevelopment Project Area was improved with several buildings and was used as a parking lot.

The analysis above was based upon data assembled by the City of Chicago, Department of Planning and Development and Louik/Schneider & Associates, Inc. The surveys, research and analysis conducted include:

1. Exterior surveys of the condition and use of the Redevelopment Project Area;
2. Field surveys of environmental conditions covering streets, sidewalks, curbs and gutters, lighting, traffic, parking facilities, landscaping, fences and walls, and general property maintenance;
3. Analysis of existing and previous uses and their relationships;
4. Comparison of current land use to current zoning ordinance and the current zoning maps;
5. Historical analysis of site uses and users;
6. Analysis of original and current platting and building size layout;
7. Analysis of Tax delinquency;
8. Review of previously prepared plans, studies and data.

## DIVISION-HOOKER REDEVELOPMENT PROJECT AREA

### A. REDEVELOPMENT PROJECT AREA GOALS AND OBJECTIVES

The City proposes to realize its goals and objectives of redevelopment through public finance techniques, including but not limited to tax increment financing, and by undertaking some or all of the following actions:

1. Provision of Public Improvements and Facilities. Adequate public improvements and facilities will be provided to service the entire Redevelopment Project Area. Public improvements and facilities may include, but are not limited to:
  - a. Reconstruction of Hooker and Haines Streets
  - b. Provision of utilities necessary to serve the redevelopment.
2. Provision for Soil and Site Improvements. Funds may be made available for improvements to properties for the purpose of making land suitable for development.
  - a. Entering into a redevelopment agreement for necessary site improvements in the Redevelopment Project Area.
3. Provision for Interest Subsidy. Funds may be made available to privately held properties for the purpose of reducing interest costs for the purpose of redeveloping properties.
4. Redevelopment Agreements. Redevelopment agreements may be entered into for public improvements, soil and site improvements, interest subsidy and possible sale, lease or conveyance of public land to private developers. Terms of conveyance shall be incorporated in appropriate disposition agreements which may contain more specific controls than those stated in the Redevelopment Plan.

In the event that the City determines that construction of certain improvements is not financially feasible, the City may reduce the scope of the proposed improvements.

## **B REDEVELOPMENT PLAN**

The Redevelopment Plan proposes the development of a warehouse/distribution facility that takes advantage of the Redevelopment Project Area's excellent location. The facility and ancillary services will cover all of the Division-Hooker Redevelopment Project Area. The public improvements could include the reconstruction of Hooker and Haines Streets which will assist in the development of the Redevelopment Area.

The Redevelopment Plan proposes development that will stimulate other industrial development by the private sector in an area outside of the Redevelopment Project Area. In order to accomplish the City of Chicago's objective of stimulating industrial development on Goose Island, numerous public and private improvements need to take place. This Redevelopment Plan will make approximately 4.5 acres of land available for new warehouse/distribution facility development.

The proposed Division-Hooker Redevelopment Project Area will require planning and programming of improvements. The redevelopment agreement will generally provide for the City to provide funding for conveyance of public land, necessary public improvement, interest subsidy, soil and site improvements. The funds for said improvements are to come from the incremental increases in tax revenues or from the City's issuance of bonds to be repaid from the incremental increase in tax revenues to be generated from the entire Redevelopment Project Area. A developer or user will undertake the responsibility for the required soil and site improvements, a portion of which may be paid for from the issuance of bonds, and will further be required to build any agreed to improvements and necessary ancillary improvements required for the project. It is anticipated that the redevelopment project will be fully completed within twenty-three (23) years from the adoption of the ordinance approving the Redevelopment Project Area.

### **C. GENERAL LAND-USE PLAN**

The Redevelopment Plan and the proposed projects described herein conform to the land uses and development policies for the City as a whole as currently provided by the Comprehensive Plan of Chicago (1966). The City of Chicago's Corridors of Industrial Opportunity, a plan for industry on Chicago's north side stated the following recommendation: "On Goose Island, support existing industrial firms through coordinated public programs and develop vacant industrial parcels in a manner which supports a modern business/industrial park environment". This Plan also recommends to "...target bridges and streets to insure adequate freight access." The Chicago Plan Commission approved the land uses proposed in the Division-Hooker Redevelopment Project Area on November 10, 1994. (See Map 3)

### **D. ESTIMATED REDEVELOPMENT PROJECT COSTS**

Redevelopment project costs mean the sum total of all reasonable or necessary costs incurred or estimated to be incurred, and any such costs incidental to this Redevelopment Plan and Redevelopment Project Area pursuant to the State of Illinois Tax Increment Allocation Redevelopment Act. Such costs may include, without limitation, the following:

1. Costs of studies, surveys, development of plans, and specifications, implementation and administration of the redevelopment plan, including but not limited to staff and professional service costs for architectural, engineering, legal, marketing, financial, planning or other services, provided, however, that no charges for professional services may be based on a percentage of the tax increment collected;
2. Property assembly costs, including but not limited to acquisition of land and other property, real or personal, or rights or interests therein, demolition of any buildings, and the cleaning and grading of land;
3. Costs of the construction of public works or improvements;
4. Costs of job training and retraining projects;
5. Financing costs, including but not limited to all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued hereunder accruing during the estimated period of construction of any redevelopment project for which such obligations are issued and for not exceeding 36 months thereafter and including reasonable reserves related thereto;

6. All or a portion of a taxing district's capital costs resulting from the redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs;
7. Payment in lieu of taxes;
8. Costs of job training, advanced vocational education or career education, including but not limited to courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more taxing districts, provided that such costs (i) are related to the establishment and maintenance of additional job training, advanced vocational education or career education programs for persons employed or to be employed by employers located in a redevelopment project area; and (ii) when incurred by a taxing district or taxing districts other than the municipality, are set forth in a written agreement by or among the municipality and the taxing district or taxing districts, which agreement describes the program to be undertaken, including but not limited to the number of employees to be trained, a description of the training and services to be provided, the number and type of positions available or to be available, itemized costs of the program and sources of funds to pay for the same, and the term of the agreement. Such costs include, specifically, the payment by community college districts of costs pursuant to Sections 10- 22.20a and 10-23.3a of the School Code;
9. Interest costs incurred by a redeveloper related to the construction, renovation or rehabilitation of a redevelopment project provided that:
  - a. such costs are to be paid directly from the special tax allocation fund established pursuant to this Act;
  - b. such payments in any one year may not exceed 30 percent of the annual interest costs incurred by the redeveloper with regard to the redevelopment project during that year;
  - c. if there are not sufficient funds available in the special tax allocation fund to make the payment pursuant to this paragraph (11) then the amount so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and
  - d. the total of such interest payments incurred pursuant to this Act may not exceed 30 percent of the total redevelopment project costs excluding any property assembly costs and any relocation costs incurred pursuant to this Act.

The estimated redevelopment project costs are shown in Table 1. To the extent that municipal obligations have been issued to pay for such redevelopment project costs incurred prior to, but in anticipation of, the adoption of tax increment financing, the City shall be reimbursed for such redevelopment project costs. The total redevelopment project costs provide an upper limit on expenditures (exclusive of capitalized interest, issuance costs, administrative costs, interest and

other financing costs). Within this limit, adjustments may be made in line items, including provision for capitalized interest and other cost of financing associated with the issuance of obligations, without amendment of this Redevelopment Plan. Additional funding in the form of State and Federal grants, and private developer contributions will be pursued by the City as means of financing improvements and facilities which are of a general community benefit.

#### **E. SOURCES OF FUNDS TO PAY REDEVELOPMENT PROJECT COSTS**

Funds necessary to pay for redevelopment project costs and/or municipal obligations which have been issued or incurred to pay for such costs are to be derived principally from tax increment revenues and/or proceeds from municipal obligations which have as their revenue source tax increment revenue. To secure the issuance of these obligations, the City may permit the utilization of guarantees, deposits and other forms of security made available by private sector developers.

The tax increment revenue which will be used to fund tax increment obligations and eligible redevelopment project costs shall be the incremental real property tax revenues. Incremental real property tax revenue is attributable to the increase in the current equalized assessed value of each taxable lot, block, tract or parcel of real property in the Redevelopment Project Area over and above the initial equalized assessed value of each such property in the Redevelopment Project Area. Other sources of funds which may be used to pay for redevelopment costs and obligations issued or incurred, the proceeds of which are used to pay for such costs, are land disposition proceeds, state and federal grants, investment income, and such other sources of funds and revenues as the municipality may from time to time deem appropriate such as municipal sales taxes, municipal amusement taxes, generated from the district. Without the use of such tax incremental revenues, the Redevelopment Project Area would not reasonably be developed. The proposed Division-Hooker Redevelopment Project Area and the proposed Goose-Island Redevelopment Project Area are contiguous to one another, and the City finds the goals, objectives and financial success of such redevelopment project areas to be interdependent. The City further finds that it is in the best interests of the City and in

furtherance of the purposes of the Act that net revenues from each such redevelopment project be made available to support the other. The City therefore proposes to utilize net incremental revenues received from one redevelopment project area to pay eligible redevelopment project costs, or obligations issued to pay such costs, in the other redevelopment project area, and vice versa. The amount of revenues from the Redevelopment Project Area made available to support the contiguous Goose Island Redevelopment Project Area, when added to all amounts used to pay eligible redevelopment project costs within the Redevelopment Project Area, shall not at any time exceed the Total Project Cost described on Table 1 (unless otherwise amended).

### **Issuance of Obligations**

To finance redevelopment costs a municipality may issue obligations secured by the anticipated tax increment revenue generated within the TIF redevelopment area. In addition, a municipality may pledge towards payment of such obligations any part or any combination of the following: (a) net revenues of all or part of any redevelopment project; (b) taxes levied and collected on any or all property in the municipality; (c) the full faith and credit of the municipality; (d) a mortgage on part or all of the redevelopment project; or (e) any other taxes or anticipated receipts that the municipality may lawfully pledge.

All obligations issued by the City pursuant to this Redevelopment Plan and the Act shall be retired within twenty-three (23) years from the adoption of the ordinance approving the Redevelopment Project Area. Also, the final maturity date of any such obligations which are issued may not be later than twenty (20) years from their respective dates of issue. One or more series of obligations may be sold at one or more times in order to implement this Redevelopment Plan. The amounts payable in any year as principal and interest on all obligations issued by the City pursuant to the Redevelopment Plan and the Act shall not exceed the amounts available, or projected to be available, from tax increment revenues and from such bond sinking funds or other sources of funds (including ad valorem taxes) as may be provided by ordinance. Obligations may be of a party or senior/junior lien natures. Obligations issued may be serial or term maturities, and may or may not be subject to mandatory, sinking fund, or optional redemptions.

Revenues shall be used for the scheduled and/or early retirement of obligations, and for reserves, bond sinking funds and redevelopment project costs, and, to the extent that real property tax increment is not used for such purposes, shall be declared surplus and shall then become available for distribution annually to taxing districts in the Redevelopment Project Area in the manner provided by the Act.

**Most Recent Equalized Assessed Valuation of Properties in the Redevelopment Project Area**

The total 1994 equalized assessed valuation for the entire Redevelopment Project Area is \$380,624. This equalized assessed valuation is subject to final verification by Cook County. After verification, the County Clerk of Cook County, Illinois will certify the amount, and this amount will serve as the "Initial Equalized Assessed Valuation."

**Anticipated Equalized Assessed Valuation**

By the year 1998 when it is estimated that initial industrial development will be completed and fully assessed, the estimated equalized assessed valuation of real property within the Redevelopment Project Area is estimated at between \$2,400,000 and \$3,400,000. This estimate is based on several key assumptions, including: 1) industrial development will be started in 1996 and completed in 1997; 2) the market value of the anticipated developments will increase following completion of the redevelopment activities described in the Redevelopment Project and Plan; 3) the most recent State Multiplier of 2.1135 as applied to 1994 assessed values will remain unchanged and 4) for the duration of the project the tax rate for the entire Redevelopment Project Area is assumed to be the same and will remain unchanged from the 1994 level.

**F. LACK OF GROWTH AND DEVELOPMENT THROUGH INVESTMENT BY PRIVATE ENTERPRISE**

As described in the Blighted Area Conditions Section of this Redevelopment Project and Plan



Report, the Redevelopment Project Area as a whole is adversely impacted by the presence of numerous blighting factors, and these factors are reasonably distributed throughout the area. Although some rehabilitation has occurred on a limited and scattered basis in the Goose Island area, the Redevelopment Project Area on the whole has not been subject to growth and development through investment by private enterprise. No private large scale projects have been initiated on Goose Island in over 20 years without the aid of Tax Increment Financing. The lack of private investment is evidenced by continued existence of blight, large tracts of vacant land and a limited number of new development projects undertaken on a planned basis in the designated project area and surrounding areas.

It is clear from the study of this area that private investment in revitalization and redevelopment has not occurred to overcome the blighting conditions that currently exist. The Redevelopment Project Area is not reasonably expected to be developed without the efforts and leadership of the City, including the adoption of this Redevelopment Project and Plan.

#### G. FINANCIAL IMPACT OF THE REDEVELOPMENT PROJECT

Without the adoption of this Redevelopment Project and Plan, and tax increment financing, the Redevelopment Project Area is not reasonably expected to be redeveloped by private enterprise. There is a real prospect that the blighted conditions will continue to exist and spread, and the whole area will become less attractive for the maintenance and improvement of existing buildings and sites. The possibility of the erosion of the assessed value of property which would result from the lack of a concerted effort by the City to stimulate revitalization and redevelopment could lead to a reduction of real estate tax revenue to all taxing districts.

Section A, B, & C of this Redevelopment Project and Plan describes the comprehensive redevelopment program proposed to be undertaken by the City to create an environment in which private investment can occur. If the redevelopment project is successful, a new private project will be undertaken that will assist in alleviating blighted conditions, creating new jobs and promoting development in the area.

The Redevelopment Project is expected to have short and long term financial impacts on the taxing districts affected by the Redevelopment Plan. During the period when tax increment financing is utilized, real estate tax increment revenues (from the increases in Equal Assessed Valuation [EAV] over and above the certified initial EAV established at the time of adoption of this Project and Plan) will be used to pay eligible redevelopment project costs for the Tax Increment Financing District. At the end of the TIF time period, the real estate tax revenues will be distributed to all taxing districts levying taxes against property located in the Redevelopment Project Area.

#### H. DEMAND ON TAXING DISTRICT SERVICES

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

The proposed Redevelopment Plan involves new construction of an industrial facility. Therefore, the financial burden of the redevelopment project on taxing districts is expected to be negligible.

No increased demands for services from any taxing district affected by the Redevelopment Plan and Project are anticipated. Although no short term financial or service demands are expected from the adoption of this Redevelopment Plan and Project, it is expected that this major private investments will take place upon the adoption of this Redevelopment Plan and Project. In addition, it is anticipated that other private investment will be attracted and take place on vacant land in the area over the life of the Redevelopment Project. Since the specifics of such additional investment cannot be determined at this time, the long term financial impacts on the various taxing jurisdictions or increases in the demands for service resulting from such new development cannot be quantified at this time. However, because of the current zoning and current land use of this vacant land being industrial in nature, any new development is likely to

be for industrial uses.

As a result of the development of industrial project increased service demands are likely to be limited to utilities either provided by the City of Chicago or the Metropolitan Water Reclamation District of Greater Chicago.

#### **I. PROGRAM TO ADDRESS FINANCIAL AND SERVICE IMPACTS**

As described in detail in prior sections of this report, the complete scale and amount of development in the Redevelopment Project Area cannot be predicted with complete certainty at this time and the demand for services provided by those taxing cannot be quantified at this time.

As indicated in Section D, Estimated Redevelopment Project Costs of the Redevelopment Project and Plan, the City plans to provide public improvements and facilities to service the Redevelopment Project Area. Such improvements may mitigate some of the additional service and capital demands placed on taxing districts as a result of the implementation of this Redevelopment Project and Plan.

## **PROVISION FOR AMENDING ACTION PLAN**

The Division-Hooker Redevelopment Project Area Tax Increment Redevelopment Plan and Project may be amended pursuant to the provisions of the Act.

## **AFFIRMATIVE ACTION PLAN**

The City is committed to and will affirmatively implement the following principles with respect to the Division-Hooker Redevelopment Project Area.

- A. The assurance of equal opportunity in all personnel and employment actions with respect to the Plan and Project, including but not limited to: hiring, training, transfer, promotion, discipline, fringe benefits, salary, employment working conditions, termination, etc., without regard to race, color, religion, sex, age, handicapped status, national origin, creed, or ancestry.
  
- B. This commitment to affirmative action will ensure that all members of the protected groups are sought out to compete for all job openings and promotional opportunities.

## LEGAL DESCRIPTION

All of Blocks 74 and 84, together with that part of Vacated West Bliss Street lying adjoining to said Blocks, all taken as a tract, in Chicago Land Company's Re-subdivision of Blocks 36, 37, 46, 47, 48, 55, 56, 62, 63, 70, 71, 74 and 84, together with Lot 1 in Block 50, all in Elston's Addition to Chicago, in the Southeast Quarter of Section 5, Township 39 North, Range 14 East of the Third Principal Meridian.

Also including all of N. Hooker St., westerly of and adjoining said Blocks 74 and 84, lying southeasterly of the north line of said Block 74 (being also the south line of W. Division St.) extended west and northwesterly of a line 66 feet southeasterly of and parallel with the southerly line of said Block 84 (being also the southerly line of W. Haines St.) extended west.

Also including all of W. Haines St., southerly of and adjoining aforesaid Block 84 lying southwesterly of the west line of N. Halsted St. extended and northeasterly of the westerly line of N. Hooker St. extended.

All in Cook County, Illinois.

**TABLE 1**  
**ESTIMATED REDEVELOPMENT PROJECT COSTS**

Program Action/Improvements

Seawall Reconstruction	\$1,100,000
Site preparation	250,000
Environmental remediation	1,280,000
Public improvements	2,000,000
Job Training	100,000
Planning, legal, studies, etc.	75,000
<b>TOTAL PROJECT COST*</b>	<b>\$4,805,000</b>

\*Exclusive of capitalized interest, issuance costs, administrative costs, interest and other financing costs

**TABLE 2**  
**1994 EQUALIZED ASSESSED VALUATION**

PERM. INDEX NO.	1994 EAV
17-05-404-001	\$224,054
17-05-408-003	\$ 33,089
17-05-408-004	\$123,481
TOTAL EAV	\$380,624



## **MAPS**

<b>Map 1</b>	<b>Redevelopment Project Boundaries</b>
<b>Map 2</b>	<b>Existing Land-Use</b>
<b>Map 3</b>	<b>Redevelopment Plan / Proposed Land-Use</b>

## **MAPS**

- Map 1**                      **Redevelopment Project Boundaries**
- Map 2**                      **Existing Land-Use**
- Map 3**                      **Redevelopment Plan / Proposed Land-Use**

CONSTRUCTION AGREEMENT

Exhibit E

Between

FEDERAL EXPRESS CORPORATION  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made the \_\_\_ day of \_\_\_\_\_, 1996, between FEDERAL EXPRESS CORPORATION, a Delaware corporation ("FedEx"), and WALSH, HIGGINS & COMPANY, an Illinois corporation ("Contractor")

RECITALS

1. FedEx owns that certain parcel of vacant land located on Goose Island in Chicago, Illinois, and more particularly described in the attached Exhibit A (the "Site")

2. FedEx wishes to cause the construction on the Site of an office, warehouse and distribution facility (the "Project") that has a building area of approximately 112,454 square feet and includes an unfinished mezzanine over the NOVAK sort area.

3. FedEx desires the services of a contractor to arrange for the design of the Project and to organize, coordinate and direct the complete construction of the Project and to assume all risks and responsibilities of designing and producing the Project within a fixed price.

4. Contractor desires to enter into this Agreement as an independent contractor and is ready, willing and able to provide the services and to perform the design and construction work required in connection with the Project in accordance with the terms and subject to the conditions of this Agreement.

5. By Federal Express Corporation Agreement (the "Redevelopment Agreement") that the City of Chicago (the "City"), acting through its Department of Planning and Development ("DPD"), and FedEx have executed, or will execute, contemporaneously with the execution of this Agreement, the City has agreed to use certain Incremental Taxes (as defined in the Redevelopment Agreement) to reimburse FedEx for a portion of the costs associated with the development of the Project.

FOR AND IN CONSIDERATION of the mutual covenants contained in this Agreement, FedEx and Contractor (the "parties") agree as follows:

ARTICLE 1  
SCOPE OF SERVICES

Section 1.01. Scope of Services. Subject to and in accordance with the terms of this Agreement, Contractor shall cause the design of the Project to be completed and shall construct the Project for FedEx on the Site. The Project is described in general terms in the recitals to this Agreement and in the Preliminary Plans and Specifications described in Article 2 and will be described in more detail or be reasonably inferable from the drawings and specifications (the "Final Plans and Specifications") that Contractor will cause to be completed after the execution of this Agreement for inclusion in the Contract Documents. Unless otherwise provided in the Contract Documents, Contractor shall provide and furnish all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and other facilities (the "Materials") and all labor, supervision, transportation, utilities, storage and other services (the "Services") as and when required in connection with the foregoing undertaking. When used in this Agreement, the term "Work" means the furnishing of the Materials and Services. The Work will not include, however, any of the Remediation Work, as that term is defined in Section 13.01 below.

ARTICLE 2  
PREPARATION AND APPROVAL OF PLANS

Section 2.01. Preliminary Base Building Plans. (a) Attached as Exhibit C-1 are preliminary base building plans for the Project ("Preliminary Base Building Plans"), including civil engineering plans, structural engineering plans, building elevations, interior and exterior architectural plans, and outline performance specifications. These Preliminary Base Building Plans are in detail satisfactory to FedEx and Contractor and depict the Project that Contractor will construct on the Property for FedEx's benefit, subject to finalization and preparation of the Final Base Building Plans (as that term is defined in Section 2.01(c)).

(b) Attached as Exhibit C-2 are preliminary interior design specifications ("Preliminary Interior Design Specifications"), including specifications for the electrical systems, plumbing systems, heating, ventilating and air conditioning systems, fire protection systems, and landscaping in and around the Project. Similar to the Preliminary Base Building Plans, these Preliminary Interior Design Specifications are subject to finalization and preparation of the Final Interior Design Plans (as that term is defined in Section 2.01(c)).

(c) The term "Preliminary Plans and Specifications" means the Preliminary Base Building Plans and the Preliminary Interior Design Specifications, together; and the term "Final Plans and Specifications" will mean the Final Base Building Plans and the Final Interior Design Plans, together. Contractor will cause all of the

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components of the Final Plans and Specifications to be prepared and delivered to FedEx and DPD for approval, in accordance with Section 2.02. Harris Architects, Inc. ("Architect"), Thatcher Engineering, Inc. ("Seawall Engineer") or their respective contractors, subcontractors or sub-subcontractors will prepare portions of the Final Plans and Specifications.

Section 2.02. Approval of Plans. (a) FedEx has reviewed and approved the Preliminary Plans and Specifications.

(b) Contractor will deliver to FedEx each of the components of the proposed Final Plans and Specifications, as soon as practicable after they have been prepared. Contractor shall deliver all of the components of the proposed Final Base Building Plans and the proposed Final Interior Design Plans to FedEx for their initial approval or disapproval on or before, November 25, 1996.

(c) Within 15 business days after Contractor's initial delivery to FedEx of each component of the proposed Final Plans and Specifications, FedEx shall either approve or disapprove that component. If at any time FedEx disapproves a component, it must give Contractor written notice of that disapproval that details with reasonable specificity the portion or element of the component disapproved and the reasons for the disapproval. FedEx may not act in an arbitrary or capricious fashion with respect to any disapproval of those components.

(d) Upon FedEx's disapproval of any component based upon the inconsistency of the disapproved component with the Preliminary Plans and Specifications, Contractor shall undertake to have the disapproved component modified and shall resubmit the modified component to FedEx within five business days following the date of its receipt of FedEx's disapproval. In each instance of resubmitted components, FedEx must approve or disapprove the resubmitted component within five business days after the date of its receipt of Contractor's resubmission by the delivery of written notice to Contractor. The five-business-day sequences of resubmission and approval or disapproval will continue until both Contractor and FedEx have approved all of the components comprising the proposed Final Plans and Specifications. FedEx's failure to either approve or disapprove any component of the proposed Final Plans and Specifications within the applicable time period set forth above will constitute FedEx's approval of that component.

(e) If FedEx disapproves a component of the proposed Final Plans and Specifications and the disapproved component was substantially consistent with the Preliminary Plans and Specifications, FedEx's disapproval will constitute FedEx's request for a Change Order (as that term is defined in Section 4.2 hereof). Following FedEx's disapproval, Contractor shall resubmit a revised component that seeks to respond to FedEx's objections as promptly as reasonably practicable under the circumstances. Within five business days after FedEx's receipt of Contractor's resubmission, FedEx must approve or disapprove

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the resubmitted component. The five-business-day sequences of resubmission and approval or disapproval contemplated in Section 2.02(d) will then continue until FedEx has approved a component of the proposed Final Plans and Specifications to which this Section 2.02(e) is applicable. Within 10 business days after FedEx's approval of a resubmission Contractor makes in accordance with the terms of this Section 2.02(e), Contractor must give FedEx written notice of Contractor's estimate of the change in schedule, if any, in the completion of construction of the Project and of any extra cost (or savings) that FedEx will realize by reason of the deviation from the Preliminary Plans and Specifications reflected in the revised component. Within 10 business days after its receipt of Contractor's notice, FedEx must give Contractor written direction that either directs Contractor to incorporate the previously disapproved component into the Final Plans and Specifications or directs Contractor to incorporate the deviation and commits to the changes, if any, in the Contract Date and the Substantial Completion Date (as those terms are defined below) that are reflected in Contractor's estimate. In the latter case FedEx's written direction will constitute a Change Order. FedEx's failure to take any action within the 10-business-day period described in the preceding sentence will constitute FedEx's election to direct Contractor to incorporate the previously disapproved component into the Final Plans and Specifications.

(f) When FedEx has approved each component of the proposed Final Plans and Specifications, the parties will manifest their approval of the proposed Final Plans and Specifications by causing their respective representatives to affix their signatures or initials to each page comprising that component and will insert a reference to that component on the list of Final Base Building Plans attached as Exhibit C-3 or the list of Final Interior Design Plans attached as Exhibit C-4, whichever is applicable, and the approved component will become part of the Contract Documents.

### ARTICLE 3 CONTRACT DOCUMENTS

Section 3.01. Definition. The Contract Documents include this Agreement, the Preliminary Plans and Specifications until superseded by the Final Plans and Specifications, the Final Plans and Specifications once approved by FedEx, all Addenda issued prior to execution of this Agreement, if any, and all exhibits or modifications to any of them. As used in this Agreement, a "modification" is:

- (i) a written amendment to this Agreement signed by FedEx and Contractor;
- (ii) a Change Order, as defined in this Agreement; or
- (iii) a written order for a change in the Work FedEx issues.



Section 3.02. Intent of Contract Documents. Upon completion of the Final Plans and Specifications, the Contract Documents will set forth all materials, appliances, labor and services of every kind necessary for the full and proper execution of the Work and the terms and conditions of payment for the Work. The parties consider the Contract Documents to be one document and, subject to the provisions of Section 32.02, whatever is called for by any one of the Contract Documents will be as binding as if called for by all.

Section 3.03. Errors in Contract Documents. If Contractor finds any error, discrepancy or variance in the Contract Documents, it shall notify FedEx before beginning the affected portion of the Work and FedEx will make any correction, interpretation or clarification promptly, basing its decision on the intent of the Contract Documents. If Contractor does not concur with FedEx's correction, interpretation or clarification, the parties will resolve the dispute in accordance with the terms of Article 30 below.

#### ARTICLE 4 ORDER OF COMPLETION

Section 4.01. Commencement. Contractor shall commence the Work as directed in FedEx's written Notice to Proceed in the form of the attached Exhibit B-1.

Section 4.02. Substantial Completion Date. For purposes of this Agreement, the term "Substantial Completion Date" means September 1, 1997, as that date may be postponed in accordance with the terms of Section 4.03 below. Contractor shall substantially complete the Work not later than the Substantial Completion Date. Substantial completion of the Work occurs when Contractor completes all of the Work other than items on the Punch List (as defined in Section 4.05) that will not materially impair FedEx's use of the Project and the City of Chicago, Illinois, or the appropriate department or agency of the City (the "City") issues its certificate of occupancy with respect to the Project (temporary or otherwise). The City's issuance of a certificate of occupancy that is subject to, or contingent upon, the completion of Punch List items, landscaping work or weather-sensitive items will fulfill the second requirement of this Section 4.02 for purposes of determining whether the Substantial Completion Date has occurred.

Section 4.03. Extension of Substantial Completion Date. (a) Time is of the essence and extension of the Substantial Completion Date will occur only as permitted in this Section 4.03. Contractor may receive an extension of the Substantial Completion Date equal to the duration of any delay ("Excused Delay") that actually occurs with respect to the Work by reason of:

- (1) any act, omission or neglect of FedEx or any of its employees, agents, contractors (other than

Contractor), agents or representatives, including, without limitation, (A) FedEx's failure to approve or disapprove, or FedEx's delay in approving or disapproving, components of the Final Plans and Specifications in a timely manner, (B) FedEx's request for, or negotiation of, any Change Order, (C) any failure or delay resulting, directly or indirectly, from title or zoning issues, or other matters that are outside the scope of the Work and are not specifically Contractor's responsibility under the terms of this Agreement, (D) FedEx's failure to complete or cause the completion of, or FedEx's delay in completing or causing the completion of, the Remediation Work in accordance with the provisions of Section 13.01 on or before November 8, 1996, and (E) any failure or delay in the issuance of any and all governmental or quasi-governmental permits or authorizations in connection with the environmental condition of the Site ("FedEx Delay");

- (ii) any failure or delay in the issuance of any governmental permits or authorizations in connection with the commencement, prosecution or completion of the Work to the extent the failure or delay is not attributable to defects in the Work, any insufficiency in the applications Contractor submits for those permits or authorizations or any delay in Contractor making those submissions;
- (iii) any failure of or delay in the availability of any one or more public utilities to the Property for the use of Contractor or any of its contractors, subcontractors, sub-subcontractors, agents or employees;
- (iv) any strikes, labor disputes, or unusual delays or shortages encountered in transportation or fuel supplies, except as provided below;
- (v) any casualties, inclement weather, other acts of God, acts of the public enemy, or other acts or occurrences beyond the reasonable control of Contractor or its employees, agents or Subcontractors, except as provided below; or
- (vi) any governmental embargo restrictions, or actions or inaction of local, state or federal governments.

If, by reason of the fault or negligence of Contractor, any Subcontractor or any of their respective shareholders, directors, officers, agents, employees, licensees or invitees, non-availability

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of materials, local strikes, local lock-outs, non-availability of local labor, or other delays occur, that occurrence will not justify an extension of the Substantial Completion Date. Moreover, inclement weather that does not prevent construction activity critical to the timely completion of the Work will not justify an extension of the Substantial Completion Date. Contractor must use commercially reasonable efforts to overcome or mitigate the effect of any Excused Delay. The parties acknowledge that an Excused Delay will not necessarily delay the substantial completion of the Project on a day-for-day basis and that the effect of a day of Excused Delay on the Substantial Completion Date may be more or less than one day.

(b) In order to obtain an extension of the Substantial Completion Date necessitated by an Excused Delay, Contractor must make a written claim to FedEx in each instance within 14 days after the beginning of the Excused Delay and, if Contractor fails to make a timely claim for an extension in accordance with the foregoing, Contractor waives its right, if any, to the extension. In the case of continuing Excused Delays, only one claim from Contractor is necessary. Each claim must include Contractor's estimate of the effect that the delay will have on the Substantial Completion Date and of the increase in the Contractor's Fee that must occur in order to compensate Contractor for the additional costs it will incur in performing the Work because of the occurrence of the Excused Delay. Within 15 days after receipt of Contractor's claim, FedEx shall render a good faith written decision granting, rejecting or modifying Contractor's claim, which decision will constitute a Change Order and be conclusive upon the parties unless Contractor objects to FedEx's decision and initiates the procedures set forth in Article 30 within 10 days after Contractor's receipt of that decision.

Section 4.04. Order of Completion. At such times as FedEx requests, Contractor shall submit to FedEx in a format acceptable to FedEx schedules showing the order in which Contractor proposes to prosecute the Work and Contractor's estimates of the dates on which completion of each segment of the Work will occur.

Section 4.05. Punch List. Upon substantial completion of the Work, FedEx shall inspect the Work and present to Contractor a list (the "Punch List") of items to be accomplished by Contractor to fully complete the Work in accordance with this Agreement and the Contract Documents and a schedule for that work (the "Schedule"). If Contractor objects to any item on the Punch List or to the Schedule, it may notify FedEx of its objections within three business days following the date of its receipt of the Punch List and Schedule, and FedEx will make such corrections and adjustments to the Punch List and Schedule as it determines to be reasonable and Contractor shall perform the work required by the corrected Punch List in accordance with the adjusted Schedule.

ARTICLE 5  
PAYMENT

Section 5.01. Contractor's Fee (a) As full consideration for Contractor's design services and Contractor's performance of the Work in accordance with the terms of this Agreement and the other Contract Documents, FedEx shall pay to Contractor the sum set forth in Exhibit D-1 (the "Contractor's Fee") in accordance with the payment procedure and the retainage requirement described in that Exhibit.

(b) The Contractor's Fee, as adjusted by Change Orders executed in accordance with the terms of this Agreement, is inclusive of all remuneration that FedEx must pay Contractor in connection with the Work and the design and other services Contractor provides with respect to the Project.

Section 5.02. Payment for Material Stored On-Site. If contemplated in Exhibit D-1, FedEx shall make payment to Contractor for the actual unit cost (excluding any transportation or handling charges) of Materials suitably stored and intended for incorporation in the Work upon storage at the Site or at a location off the Site that FedEx expressly authorizes by advance written notice to Contractor; payments by FedEx in accordance with the foregoing will be subject to the payment procedures set forth in Exhibit D-1 and the following conditions:

- (i) Contractor must furnish supporting evidence satisfactory to FedEx evidencing the cost of the Materials and the actual shipment of the Materials to the Site or the other authorized location;
- (ii) Contractor may not store the Materials for more than 45 calendar days, after which time Contractor must install, or cause the installation of, the Materials in place;
- (iii) Contractor must store the Materials in accordance with applicable manufacturer's recommendations and FedEx's instructions;
- (iv) Payment for stored Materials will be subject to the retainage requirement set forth in Exhibit D-1; and
- (v) Contractor must submit to FedEx bills of sale or such other documentation as establishes to FedEx's satisfaction that title to such Materials passes to FedEx immediately upon payment, free of all liens and security interests.

Section 5.03. Use of Payments. Contractor shall use all sums paid to it in accordance with the terms of this Agreement for the design of the Project and performance of the Work. At FedEx's request, Contractor shall furnish satisfactory proof as to the disposition of any monies FedEx pays to Contractor, but FedEx has no obligation to see to the proper disposition or application of monies FedEx pays to Contractor.

Section 5.04. Payment Not a Waiver Neither the approval or making of any payment to Contractor nor the partial or entire use of the Work by FedEx constitutes an acceptance of any portion of the Work.

Section 5.05. Substantial Completion Payment. (a) Within 20 business days after the date on which Contractor substantially completes the Work, the parties formulate the punch list for the Project in accordance with the terms of Section 5.05(c), and FedEx receives the last of the items Contractor must submit in accordance with the terms of Section 5.05(b), FedEx shall pay to Contractor the amount (the "Substantial Completion Payment") by which the previously unpaid portion of the Contractor's Fee, including any retainage, exceeds one hundred twenty five percent (125%) of the amount upon which the parties agree, or that the Inspecting Architect that FedEx retains in accordance with the terms of the Redevelopment Agreement (the "Inspecting Architect") designates, in accordance with the terms of Section 5.05(c) to assure Contractor's completion of punch list items.

(b) FedEx may withhold the Substantial Completion Payment until Contractor submits to FedEx the following:

- (i) An affidavit signed by an authorized officer of Contractor stating that all payrolls, bills for Materials and Services, and all other indebtedness connected with the Work, for which FedEx or any of its property might in any way be responsible, have been paid or otherwise satisfied;
- (ii) A consent of surety (if any) to the Substantial Completion Payment;
- (iii) Proof satisfactory to FedEx of the payment or satisfaction of all of Contractor's obligations arising from or connected with the Work, including, without limitation, releases and waivers of liens executed by Contractor and all of its Subcontractors in favor of FedEx and prepared in the form of Exhibit D-3 or such other form as FedEx may designate;

- (iv) If required by the applicable law of the jurisdiction in which the Site is located, evidence of the filing by Contractor of a Notice of Completion of the Work conforming to the requirements of that jurisdiction; and
- (v) All instruction and operating manuals, parts lists, "as-built" drawings and other items required by the terms of the Contract Documents.

FedEx may also withhold the Substantial Completion Payment until the City issues the Certificate contemplated by Section 7.01 of the Redevelopment Agreement if the City's failure to issue it or its delay in issuing it occurs by reason of the fault or negligence of Contractor, any Subcontractor or any of their respective shareholders, directors, officers, agents, employees, licensees or invitees.

(c) Within 10 business days after the date on which Contractor substantially completes the work, the parties will jointly develop a punch list and completion schedule that sets forth those items of the Work that remain to be completed, the estimated cost of completing each of those items, and a reasonable time for the completion of those items. If the parties fail to agree upon whether an item is properly included on the punch list, upon the estimated cost of completing an item on the punch list, or what constitutes a reasonable time for completing an item on the punch list, the Inspecting Architect will make the determination for the parties. Following the formulation of the punch list, Contractor shall complete each item appearing on it within the corresponding time for completion appearing on the punch list. Within 20 business days after each date on which the Inspecting Architect certifies to FedEx that Contractor has completed an item appearing on the punch list, FedEx shall pay to Contractor the estimated amount upon which the parties agreed or that the Inspecting Architect designated for the completion of that item. Within 20 business days after the date on which the Inspecting Architect certifies to FedEx that Contractor has completed all items appearing on the punch list, FedEx shall make final payment to Contractor of the previously unpaid balance of the Contractor's Fee.

(d) If any Subcontractor refuses to furnish a release or waiver of lien, Contractor may furnish a bond in form and amount satisfactory to FedEx to indemnify it against any lien arising in favor of such Subcontractor. Notwithstanding the foregoing, FedEx reserves the right to make payment directly to any Subcontractor (or jointly to the Subcontractor and Contractor) in such amount as FedEx determines to be appropriate to protect FedEx's property from a lien to which such Subcontractor is entitled or alleges that it is entitled, and the amount owed Contractor will be reduced by the amount of any such payment by FedEx. FedEx may exercise that right only after giving Contractor written notice of its intention to do so at least five business days in advance of the making of any payment and only before

receiving a bond satisfying the requirements set forth above in this Section 5.05(d). 11

Section 5.06. FedEx's Right to Withhold Payment. FedEx may withhold all or part of any payment (including the Substantial Completion Payment and final payment) and it may withhold retainage to such extent as it deems necessary to protect itself from loss on account of:

- (i) defective Work;
- (ii) third-party claims arising from the Work and filed against FedEx, or reasonable evidence indicating the probable filing of any such claim;
- (iii) reasonable doubt that Contractor will substantially complete the Work by the Substantial Completion Date;
- (iv) failure of Contractor to make payments, when due, to its Subcontractors or other suppliers of equipment, material or labor required in connection with the Work;
- (v) evidence of fraud, over-billing or overpayment discovered upon audit;
- (vi) unsatisfactory prosecution of the Work by Contractor;
- (vii) reasonable doubt that Contractor can complete the Work for the undisbursed portion of the Contractor's Fee; or
- (viii) damage to another contractor, subcontractor or sub-subcontractor that Contractor causes.

## ARTICLE 6 EQUIPMENT AND MATERIALS

Section 6.01. Materials Provided by Contractor. All Materials incorporated in the Work must be new and unused and, when not specified in detail in the Contract Documents, all Materials incorporated in the Work must be of the most suitable grade and quality for the purpose intended.

Section 6.02. Type of Material Used. (a) Where the Contract Documents refer to any Material by trade name, make or catalog number followed by the words "or equal," that reference establishes the standard of quality and performance required and does not reflect an intent to limit competition. With the prior written approval of FedEx, Contractor may use other Materials that are equal in quality

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and performance to those named in the Contract Documents, but no such approval will constitute a waiver of FedEx's right to require use of Materials that conform to the standards of quality and performance established in the Contract Documents with respect to the item, for which FedEx approved the substitution. Contractor must bear any additional expense resulting from the substitution.

(b) Within sufficient time to avoid delays in the Work, Contractor must submit to FedEx the name of the manufacturer, model number and other identifying information relating to the performance, capacity, nature and rating of Materials proposed in substitution for those specified in the Contract Documents. Where the Contract Documents specify Materials by trade name, make or catalog number without using the words "or equal," Contractor may not substitute Materials and must furnish the items as specified.

Section 6.03. Non-Conforming Materials. (a) If Contractor installs or uses Materials in the Work that do not comply with the requirements of the Contract Documents and that FedEx has not previously approved, it does so at the risk of subsequent rejection by FedEx.

(b) Contractor is fully and solely responsible for quality control for all Materials used in the performance of the Work.

## ARTICLE 7 "AS-BUILT" DRAWINGS AND DATA

Section 7.01. "As-Built" Drawings. Contractor shall maintain a complete set of drawings at the Site for the purpose of showing "as-built" conditions. Contractor shall cause those drawings to be kept current and to be marked each day to show all changes and variations, with each entry being dated and verified as made. Contractor shall furnish to FedEx upon request reproducible tracings of "as-built" drawings. Upon completion of the Work and prior to Final Payment, Contractor shall provide to FedEx one complete reproducible set and one complete printed set of the "as-built" drawings for the Project.

Section 7.02. Operation and Maintenance Data. (a) Contractor shall furnish complete data for the operation, repair and maintenance of each operating component of the Project (the "Data"). The Data shall include prints of shop drawings showing "as-installed" conditions, sources of equipment and principal materials, specified tests and performance data, repair and maintenance data, lubrication instructions and recommendations, parts lists and other catalog data or information required to operate and maintain any part of the Project. Contractor shall take care to exclude inapplicable or duplicate information.

(b) Prior to Final Payment, Contractor shall provide to FedEx three complete sets of the Data arranged alphabetically by components



grouped together and securely bound in a durable folder or binder labeled and indexed to show its contents.

(c) Contractor shall also keep at the Site installation information for all machinery and equipment, but Contractor may not use used or marked prints or data sheets in assembling the Data.

Section 7.03. Information From Suppliers. As a condition of its purchase of equipment, Contractor shall require its suppliers to (1) furnish complete and adequate operating and maintenance data pertaining to their equipment, (ii) assign to FedEx any warranty, express or implied, furnished by the manufacturer of the equipment, and (iii) assign to FedEx any customary maintenance or repair service, spare parts supply service or personnel support service furnished by the manufacturer of the equipment. If the terms and conditions of any warranty, maintenance or repair service, spare parts supply service or personnel support service furnished by the manufacturer of the equipment are negotiable, FedEx may negotiate those terms and conditions with the manufacturer at FedEx's election. Contractor shall use its best efforts to advise FedEx in advance of placing any order for equipment, for which the warranty period commences upon purchase or shipment.

## ARTICLE 8 SUBCONTRACTORS

Section 8.01. Definition. As used in this Agreement and the other Contract Documents, a "Subcontractor" is any person or organization that has either a contract (a "Subcontract") with Contractor to perform any portion of the Work or to provide to Contractor Materials or Services required in connection with the Work or a direct or indirect contract with a Subcontractor to perform any portion of the Work or to provide to a Subcontractor Materials or Services required in connection with the Work.

Section 8.02. No Contractual Relationship With FedEx. The Contract Documents do not create any contractual relationship between FedEx and any Subcontractor, and no Subcontract shall relieve Contractor of its obligation to completely perform the Work for the Contractor's Fee if any Subcontractor fails to perform its work in a satisfactory manner. Contractor is as fully responsible to FedEx for the acts and omissions of its Subcontractors and the persons the Subcontractors employ, directly or indirectly, as it is for the acts and omissions of persons Contractor directly employs.

Section 8.03. Award of Subcontracts. (a) Contractor must furnish to FedEx in writing the name of each Subcontractor Contractor proposes to hire and the contract sum Contractor proposes to pay to each prospective Subcontractor. FedEx shall promptly notify Contractor of any objections FedEx has with respect to any prospective Subcontractor that Contractor includes in that list, but FedEx's

objection to a prospective Subcontractor will not compel Contractor to hire another. 14

(b) FedEx may require Contractor to dismiss any Subcontractor for misconduct or non-performance and to substitute a Subcontractor acceptable to FedEx. If FedEx requires a substitute for any Subcontractor for any reason other than misconduct or non-performance by the Subcontractor, the parties shall adjust the Contractor's Fee by means of a Change Order in order to reflect the difference in cost occasioned by the substitution.

(c) Contractor shall deliver to FedEx and DPD photocopies of each Subcontract that is executed and that relates to the seawall reconstruction included in the Work within five business days after the date that Subcontract is executed.

Section 8.04. Subcontract Terms. A Subcontractor must perform all portions of the Work that it undertakes in accordance with the terms of a written agreement between Contractor and the Subcontractor (and, where appropriate, between Subcontractors and their subcontractors), which agreement must contain provisions that:

- (i) preserve and protect the rights of FedEx under the terms of the Contract Documents as they pertain to the portion of the Work performed by the Subcontractor;
- (ii) require that the Subcontractor's work be performed in accordance with the requirements of the Contract Documents;
- (iii) require submission to Contractor of applications for payment;
- (iv) require that the Subcontractor submit to Contractor all claims for additional monies, extensions of time, damages for delay or similar matters relating to the subcontracted portion of the Work in sufficient time to enable Contractor to comply in the manner provided in the Contract Documents for like claims by Contractor upon FedEx; and
- (v) obligate the Subcontractor to consent specifically to the provisions of Sections 5.02, 8.02, 12.04, 12.05, 12.06, 12.07, 12.08, 20.01 and 28.01 of this Agreement.

ARTICLE 9  
PAYMENT TO SUBCONTRACTORS

Section 9.01. FedEx's Withholding of Payment. If FedEx withholds monies for any cause attributable to the fault of Contractor, but not to the fault of a Subcontractor, who would have received a payment out of the payment for which Contractor had made application to FedEx, Contractor shall pay that Subcontractor for its work, to the extent completed, upon demand made by the Subcontractor at any time after the payment by FedEx to Contractor otherwise would have become due.

Section 9.02. Independent Obligation to Pay. Contractor's obligation to pay its Subcontractors is an independent obligation from FedEx's obligation to pay Contractor, and FedEx has no obligation to pay or to see to the payment of any monies to any Subcontractor. Consequently, FedEx's withholding of payments in accordance with the terms of this Agreement will not be grounds for Contractor to withhold payments properly due its Subcontractors.

ARTICLE 10  
CHANGES

Section 10.01. Changes in the Work. (a) Without invalidating this Agreement, FedEx may order extra work or make changes by altering, adding to or deducting from the Work by executing a Change Order in the form of the attached Exhibit E. Contractor shall perform all work required by virtue of a valid Change Order in accordance with the conditions of this Agreement and the other Contract Documents.

(b) By written instructions to Contractor, FedEx may also make changes in the Work not involving extra cost and not inconsistent with the purposes of the Work without execution of a Change Order, but, except for such changes, Contractor may not undertake any extra Work or bring about a change in the Work unless the parties execute a Change Order and no claim for an addition to the Contractor's Fee or any extension of the Substantial Completion Date will be valid unless so ordered in a written Change Order.

Section 10.02. Change Order Procedure. Upon receipt of a request from FedEx for extra work or changes in the Work that would increase or decrease the Contractor's Fee or affect the Substantial Completion Date, Contractor shall furnish to FedEx a detailed statement of Contractor's proposal for performing the extra work or changes in the Work and the effect of the extra work or changes, if any, on the Contractor's Fee and the Substantial Completion Date. If FedEx approves in writing Contractor's proposal, the parties shall execute a Change Order after observing any special conditions set forth in Exhibit D-1, which Change Order will adjust the Contractor's Fee and the Substantial Completion Date, as appropriate. If the Change Order contemplates a change in the basic use of the Project or a reduction in the floor area of the building included as part of the Project, CPO

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must also approve the Change Order before it becomes effective. If required by FedEx, Contractor shall solicit bids with respect to any work contemplated in a proposed Change Order in accordance with the provisions of this Agreement and the other Contract Documents. Promptly following execution of each Change Order, Contractor shall deliver a copy of it to the City, together with documentation substantiating the need for the change the Change Order identifies.

ARTICLE 11  
CONTRACTOR'S UNDERSTANDING

Section 11.01. Examination of Site. Contractor acknowledges that, by careful examination, it has satisfied itself as to the nature and location of the Work, the character, quality and quantity of Materials needed prior to and during the prosecution of the Work, general and local conditions affecting the availability of Materials and Services, and all other matters that may affect the Work. In making the foregoing statement, Contractor does not intend (i) to imply that it has investigated Environmental Conditions (as defined in Section 13.01 below) affecting the Site other than by familiarizing itself with the information and reports described in the attached Exhibit H, (ii) to undertake any obligations with respect to Environmental Conditions not expressly set forth in Article 13 below, or (iii) to limit its entitlement to receive extensions of the Substantial Completion Date in accordance with the terms of Section 4.03.

Section 11.02. Sufficiency of Contract Documents. (a) Contractor acknowledges that, if discrepancies, omissions, ambiguities or conflicts exist in the Contract Documents, Contractor shall seek clarification and corrections in a timely manner in order to ensure substantial completion of the Work by the Substantial Completion Date. Contractor's failure to advise FedEx of the existence of any such discrepancies, omissions, ambiguities or conflicts within 30 calendar days after the date of Contractor's receipt of the Contract Documents will constitute an acknowledgment by Contractor that none exist in the Contract Documents. In addition, Contractor acknowledges that FedEx has not made any warranties, guarantees or representations of any kind regarding the sufficiency of the Contract Documents or any other matter relating to the Work.

(c) FedEx will not be responsible for, and the Contractor's Fee will not be adjusted by reason of, any damages resulting from any discrepancies, omissions, ambiguities or conflicts in the Contract Documents not noted by Contractor in accordance with the terms of Section 11.02(b).

Section 11.03. No Oral Modification. No oral agreement or conversation with any officer, agent or employee of FedEx either before or after the execution of this Agreement will affect or modify any of the terms or obligations contained in this Agreement or the other Contract Documents.

ARTICLE 12  
REDEVELOPMENT AGREEMENT REQUIREMENTS

Section 12.01. Quarterly Progress Reports. Contractor shall provide DPD with written quarterly progress reports that detail the status of the Project and report any adjustment in the Substantial Completion Date that occurred during the preceding calendar quarter.

Section 12.02. Barricades. Prior to commencing any portion of the Work that requires the use of barricades, Contractor shall install a construction barricade of a type and appearance satisfactory to the City and erected in compliance with all applicable Federal, state or local laws, ordinances and regulations.

Section 12.03. Promotional Sign. At the City's request, Contractor shall erect at a conspicuous location at the Site and maintain during the performance of the Work a sign that is of a size and style the City approves and that indicates that the City is providing financing that Owner requires in connection with the development of the Project.

Section 12.04. Local Contractors and Vendors. Contractor shall use its best efforts to ensure that all Subcontracts will be let to persons or entities whose main office and place of business is located within the City of Chicago. Contractor shall incorporate the foregoing requirement in each Subcontract Contractor executes.

Section 12.05 Employment Profile. At DPD's request from time to time made, Contractor shall submit, and shall cause each Subcontractor to submit, to DPD statements of its employment profile.

Section 12.06. Prevailing Wage. Contractor shall pay the prevailing wage rate, as ascertained by the Illinois Department of Labor (the "Department"), to each of its employees engaged in the performance of the Work. Until the Department revises the prevailing wage rates, the specified rates to be paid to Contractor's laborers, workers and mechanics for each craft or type of worker or mechanic employed will be those listed in the attached Exhibit H. If the Department revises the prevailing wage rates prior to the Substantial Completion Date, the revised rates will supersede those set forth in Exhibit H as of the date the Department's revision becomes effective. Contractor shall also cause each Subcontractor to comply with the foregoing requirement and shall incorporate, or cause to be incorporated, into each Subcontract provisions that accomplish that end.

Section 12.07. Employment Opportunities. (a) During the performance of the Work, Contractor shall not 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 sources 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 that ordinance and as amended from time to time (the "Human Rights Ordinance"). Contractor 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. Contractor must post in conspicuous places, available to employees and applicants for employment, notices that the City provides setting forth the provisions of this non-discrimination provision. In addition, in all solicitations or advertisements for employees, Contractor shall state that all qualified applicants will 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, Contractor must present opportunities for training and employment of low- and moderate-income residents of the City, in general, and the Redevelopment Area (as defined in the Redevelopment Agreement) in particular and must award Subcontracts, or cause Subcontracts to be awarded, to business concerns that are located in, or owned in substantial part by persons residing in, the City and the Redevelopment Area in particular.

(c) Contractor shall comply with all Federal, state and local equal employment and affirmative action statutes, rules and regulations, including, without limitation, the City's Human Rights Ordinance, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1933), and any subsequent amendments to those ordinances and any regulations promulgated on the authority of those ordinances.

(d) In order to demonstrate compliance with the foregoing requirement of this Section 12.07, Contractor shall cooperate with, and promptly and accurately respond to, inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of Federal, state and municipal agencies.

(e) Contractor shall also cause each Subcontractor to comply with the foregoing requirements of this Section 12.07 and shall incorporate, or cause to be incorporated, into each Subcontract provisions that accomplish that end.

Section 12.08. City Resident Construction Worker Employment Requirement. (a) Contractor shall adopt, and shall cause the Subcontractors to adopt, employment practices that ensure that the

minimum percentage of total worker hours performed by actual residents of the City in connection with the development of the Project, including, without limitation, worker hours performed in furtherance of the environmental remediation of the Site conducted under the terms of contracts FedEx separately let to Montgomery Watson Constructors, Inc. and NET Midwest, Inc., will comply with the requirement established in Section 2-92-330 of the Municipal Code of Chicago (i.e., actual residents of the City must perform at least 50 percent of the total worker hours worked). In satisfying the foregoing requirement, Contractor shall also make good faith efforts, and cause the Subcontractors to make good faith efforts, to utilize qualified residents of the City in both unskilled and skilled labor positions Contractor may, however, request a reduction or waiver of the foregoing requirement in accordance with Section 2-92-330 of the Municipal Code of Chicago and the standards and procedures the Purchasing Agent of the City develops from time to time on the authority of that ordinance.

(b) The term "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.

(c) Contractor shall maintain adequate employee residency records to show that actual Chicago residents are employed in connection with the development of the Project. Contractor shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence. Contractor shall submit to the Commissioner of DPD in triplicate weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) that clearly identify the actual residence of every employee listed on the payroll report. The first time that an employee's name appears on a payroll, that employee's date of hire should also appear after his or her name. Contractor shall provide full access to its employment records to the Purchasing Agent, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Contractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the Work. At DPD's direction, Contractor shall verify or clarify an employee's actual residence by means of affidavits and other supporting documentation.

(d) The foregoing provisions of this Section 12.08 will not constitute 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, the Redevelopment Agreement or related documents.

(e) Contractor shall also cause each Subcontractor to comply with the foregoing requirements of this Section 12.08 and shall



incorporate, or cause to be incorporated, into each Subcontract provisions that accomplish that end.

Section 12.09. Contractor's MBE/WBE Commitment. (a) Consistent with the findings supporting the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 12.09 and Section 10.03 of the Redevelopment Agreement, Contractor shall let Subcontracts for Services and Materials used in the Work so as to ensure that the following percentages of the total Project Budget (inclusive of the contract sums paid for the environmental remediation of the Site conducted under the terms of contracts FedEx separately let to Montgomery Watson Constructors, Inc. and NET Midwest, Inc., but exclusive of the acquisition price of any part of the Site) will be expended for contract participation by MBEs or WBEs:

1. At least twenty five percent (25%) by MBEs.
- ii. At least five percent (5%) by WBEs.

Contractor may meet all or part of the foregoing commitment through credits received in accordance with Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in its activities and operations other than the Work. In satisfying the foregoing MBE/WBE commitment, Contractor will receive credit only once for any Subcontractor or material supplier that constitutes both a MBE and a WBE. Contractor may seek a reduction or waiver of the foregoing commitment only in accordance with Section 2-92-450, Municipal Code of Chicago.

(b) Contractor shall deliver quarterly reports to DPD during the performance of the Work describing its efforts to achieve compliance with the requirement set forth in Section 12.09(a). Each report will include, inter alia, the name and business address of each MBE and WBE Contractor solicits to work on the Project, and the response received from each solicitation, the name and business address of each MBE or WBE actually involved in the performance of the Work, a description of the Services or Materials supplied, the date furnished and amount of those Services or Materials, and such other information as may assist DPD in determining Contractor's compliance with the MBE/WBE commitment set forth in Section 12.09(a). With advance notice of at least five business days, Contractor must provide DPD access to Contractor's books and records, including, without limitation, payroll records, books of account and tax returns, in order to allow the City to review Contractor's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Work.

(c) If a Subcontractor misrepresents its status as a MBE or WBE and DPD disqualifies that Subcontractor for purposes of determining the extent of Contractor's fulfillment of its MBE/WBE commitment, Contractor must discharge that Subcontractor and, if possible,

identify and engage a qualified MBE or WBE as a replacement For  
purposes of this Section 12.09(c), Section 2-92-540, Municipal Code of  
Chicago further describes disqualification procedures. 21

(d) Prior to commencing the Work, Contractor must meet, and must cause the major Subcontractors with whom it executes Subcontracts to meet, with FedEx and DPD's monitoring staff with regard to Contractor's compliance with its obligations under the terms of this Section 12.09 and FedEx's obligations under the terms of Section 10.03 of the Redevelopment Agreement. During that meeting, Contractor shall demonstrate to DPD its plan to fulfill the commitment it makes under the terms of this Section 12.09.

Section 12.10. Contractor Indemnity. Contractor shall indemnify and hold FedEx harmless from all claims, demands, actions, losses, liability, costs and expenses that may be asserted against, or sustained by, FedEx by reason of Contractor's failure to perform fully and punctually any of the obligations it undertakes under the terms of this Article 12, including, without limitation, (i) the loss of any City Funds that the City agreed to pay to FedEx in accordance with the terms of Section 4.03(b) of the Redevelopment Agreement, but that the City withholds from FedEx by reason of Contractor's failure to perform fully and punctually any of the obligations it undertakes under the terms of this Article 12, or (ii) any amount that FedEx becomes obligated to pay to the City by virtue of the ninth paragraph of Section 10.02 of the Redevelopment Agreement. Contractor's aggregate liability under this Section 12.10 will not exceed the sum of (A) the amount, if any, that FedEx becomes obligated to pay to the City by virtue of the ninth paragraph of Section 10.02 of the Redevelopment Agreement and (B) the present value of the series of disbursements of City Funds that FedEx anticipates receiving in accordance with the terms of the Redevelopment Agreement discounted at a rate equal to the then average rate for Moody's "BBB" rated corporate bonds with terms corresponding to the period beginning in the month the calculation is made and ending in the month the last of those disbursements would have occurred.

Section 12.11. Liability Limitation. Except for the obligations Contractor expressly undertakes under the terms of the Contract Documents, Contractor has no liability under the terms of the Redevelopment Agreement.

## ARTICLE 13 ENVIRONMENTAL MATTERS

Section 13.01. Site Condition Information. Contractor acknowledges receipt of the information and reports described in the attached Exhibit E and pertaining to the known presence of Hazardous Substances, as defined below, on the Site (the "Known Environmental Conditions"), FedEx's plan to remediate the Site in advance of the commencement of the Work, and the risks that the anticipated levels of

Hazardous Substances on the Site following that remediation will pose to human health FedEx shall remediate the Site in accordance with the Corrective Action Plan listed among the entries in the attached Exhibit H prior to sending Contractor its Notice to Proceed (that activity being called the "Remediation Work"). Except as expressly set forth in this Article 13, Contractors, its Subcontractors and the respective directors, officers, shareholders, employees and agents of Contractor and its Subcontractors will have no liability or responsibility for Environmental Conditions (as defined below), including, without limitation, the Known Environmental Conditions, or for any remediation or mitigation of Environmental Conditions, including, without limitation, the Remediation Work. "Environmental Conditions" means the presence on, in, or under, or migrations to or from, the Site of any Hazardous Substances in concentrations that exceed any effective cleanup standards that Environmental Laws establish, whether occurring in ambient air, surface water, groundwater, land surface or subsurface strata. "Hazardous Substances" means all hazardous substances, as that term is defined in CERCLA or in any other Environmental Laws, unless it is naturally occurring, and all petroleum or petroleum products. "Environmental Laws" means all federal, state or local environmental laws and all policies, rules and regulations promulgated on the authority of those laws that are at any time and from time to time applicable to the Site, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Solid Waste Disposal Act ("SWDA") and Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; and all applicable rules and regulations of the United States or the State of Illinois respective Environmental Protection Agencies.

Section 13.02. Health and Safety Plan. Contractor shall formulate and implement a health and safety plan (the "Health and Safety Plan") that is reasonable in light of the Known Environmental Conditions and the goals of the Remediation Work and that complies with all applicable laws, ordinances, rules and regulations, including, without limitation, the Occupational Health and Safety Act and the regulations promulgated on the authority of that Act. In formulating the Health and Safety Plan, Contractor may rely on the information and reports listed in the attached Exhibit H. Among the information on which Contractor may rely are the conclusions that Montgomery Watson Constructors, Inc., FedEx's environmental consultant, reached regarding the level of protective wear to be used by workers on the Site, but, in relying on that information, Contractor must recognize that Montgomery Watson Constructors, Inc. reached those conclusions prior to the discovery of certain of the Known Environmental Conditions. Contractor shall cause its workers and those of its Subcontractors engaged in the Work to comply with the Health and Safety Plan. Moreover, if, during the Work, Contractor or

any of the Subcontractors discover an Environmental Condition not included among the Known Environmental Conditions, Contractor shall take reasonable measures to protect, and shall cause the Subcontractors to take reasonable measures to protect, their respective workers from exposure to the newly discovered Environmental Condition and shall give to FedEx's Representative oral notice via telephone of the discovery of that Environmental Condition on the date of the discovery and shall confirm that notice in writing within one business day after the date of the discovery. Unless FedEx specifically concurs with another course of action by means of written notice delivered to Contractor, Contractor shall discontinue work in the vicinity of the area affected by the newly discovered Environmental Condition pending FedEx's investigation of the discovery and the completion of any remediation that Environmental Laws require FedEx to undertake with respect to that Environmental Condition or that FedEx elects to undertake. Moreover, if the potential risk to human health that a newly discovered Environmental Condition warrants, Contractor may discontinue in its reasonable discretion all work on the Site pending FedEx's investigation of the discovery and the completion of any remediation that Environmental Laws require FedEx to undertake with respect to that Environmental Condition or that FedEx elects to undertake. Delay in the performance of the Work attributable to that investigation or additional remediation will constitute Excused Delays for purposes of this Agreement. Contractor must promptly make appropriate adjustments to the Health and Safety Plan to reflect the discovery of the additional Environmental Condition.

Section 13.03. Additional Reports. Promptly following its receipt of any additional reports that pertain to Hazardous Substances on the Site or any correspondence from the United States Environmental Protection Agency, the Illinois Environmental Protection Agency, or any other governmental authority having jurisdiction over the environmental condition of the Site that pertain to the Site and that might affect the manner in which Contractor prosecutes the Work, FedEx shall furnish copies of those reports or correspondence to Contractor

Section 13.04. Testing of Fill. If the Work requires Contractor or any Subcontractor to bring soil on to the Site, Contractor shall make arrangements for FedEx or its agent to take soil samples from each source from which Contractor and its Subcontractors intend to obtain that soil in advance of taking any soil from that source to the Site. In that regard, Contractor must cause a backhoe or other comparable equipment and its operator to be available at Contractor's expense at each source from which FedEx or its agent takes soil samples in order to enable the samples to be taken from different soil strata at the source. Contractor must not take, and must not permit any of its Subcontractors to take, any soil from a source for use at the Site until FedEx causes soil samples from that source to be analyzed for the presence of Hazardous Substances and those analyses indicate that the samples are free of Hazardous Substances.

Section 13.05. FedEx Indemnification. With the exception of liability, damages, losses, expenses, demands, claims, suits and judgments for which Contractor undertakes responsibility in Section 13.06, FedEx shall indemnify, defend and hold Contractor, its Subcontractors and the respective directors, officers, shareholders, employees and agents of Contractor and its Subcontractors harmless from and against any and all liability, damages, losses, expenses, demands, claims, suits or judgments, including reasonable attorneys' fees and expenses, that may be asserted against, or sustained by, any of the indemnified parties by reason of bodily injury or illness alleged to have occurred because of either FedEx's alleged failure to complete the Remediation Work, or alleged exposure to any Environmental Condition, including, without limitation, any Known Environmental Condition, any existing, but currently unknown Environmental Condition, and any Environmental Condition that comes into existence following the execution of this Agreement.

Section 13.06. Contractor Indemnification. Contractor shall indemnify, defend and hold FedEx, its directors, officers, shareholders, employees and agents, the City and its elected officials and employees harmless from and against any and all liability, damages, losses, expenses, demands, claims, suits or judgments, including reasonable attorneys' fees and expenses, that may be asserted against, or sustained by, any of the indemnified parties by reason of (i) any Environmental Condition that Contractor, the Subcontractors, the respective agents and employees of Contractor and the Subcontractors, or any other person for whose acts or omissions any of the foregoing persons or entities may be responsible during the performance of the Work causes, or (ii) Contractor's failure to perform the obligations it undertakes under the terms of this Article 13.

Section 13.06. Survival of Indemnities. The indemnities set forth in this Article 13 will survive the completion of the Work and any termination of this Agreement.

ARTICLE 14  
RELATIONSHIP OF PARTIES

Section 14.01. Independent Contractor Relationship. The parties intend that this Agreement will create an independent contractor relationship. FedEx's only interest is the results of Contractor's efforts and FedEx will not exercise any control over the conduct or supervision of the design of the Project or the performance of the Work. Contractor has full responsibility for the payment of all federal, state and local taxes and contributions, including penalties and interest, imposed in accordance with unemployment insurance, Social Security, income tax, workers' compensation and other similar statutes. Moreover, Contractor has sole responsibility for any liability to third parties arising by virtue of the negligent or intentional acts or omissions of Contractor, the Subcontractors and

their respective directors, officers, agents and employees during the design of the Project and the performance of the Work.

Section 14.02. Disclosure of Information. Contractor acknowledges that certain of FedEx's valuable, confidential and proprietary information may come into Contractor's possession. Contractor must hold all information it obtains from or about FedEx in strictest confidence and must not use that information other than for the design of the Project and the performance of the Work. Contractor must also cause its employees, the Subcontractors and the Subcontractors' employees to be bound by the same obligation of confidentiality as that which Contractor undertakes under the terms of this Section 14.02. Without FedEx's prior written consent, Contractor may not communicate any of FedEx's information in any form to any third party other than Subcontractors that require the information in order to perform their respective portions of the Work and their employees. If Contractor breaches its obligations under the terms of this Section 14.02, FedEx may seek preliminary and permanent injunctive relief and an equitable accounting of all profits or benefits Contractor derived by virtue of its breach in addition to any other remedy available to it at law or in equity.

Section 14.03. Ownership of Plans. The Final Plans and Specifications and all other documents, data and material related to the Project that Contractor produces for FedEx in accordance with the terms of this Agreement (the "Design Work Product") will be FedEx's sole property. Upon the expiration or any earlier termination of this Agreement or upon any earlier request by FedEx, Contractor shall deliver the Design Work Product to FedEx.

## ARTICLE 15 FEDEX'S REPRESENTATIVE

Section 15.01. FedEx's Representative. In its Notice to Proceed, FedEx shall designate its representative for the Work ("FedEx's Representative"). FedEx's Representative will have full authority to stop the Work whenever, in his or her best judgment, such stoppage may be necessary to ensure the proper execution of the Work. FedEx's Representative will have authority to reject any Work that does not conform to the requirements of this Agreement or the other Contract Documents and to decide questions that arise during the performance of the Work. FedEx's Representative will also designate in writing all persons in FedEx's employ, who are authorized to have access to the Site. FedEx has the right to replace its Representative at any time and for any reason. The parties do not intend the foregoing to make FedEx's representative an arbiter of disputes that arise between the parties and that relate to the Work.

Section 15.02. FedEx's Decisions. As soon as practicable after presentation to him, FedEx's Representative will make decisions in writing on all matters relating to the prosecution of the Work or the

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interpretation of the Contract Documents and all such decisions made by FedEx's Representative will be conclusive.

ARTICLE 16  
SUPERVISION OF THE WORK:  
SAFETY AND SECURITY

Section 16.01. Contractor's Project Manager. Contractor shall designate in writing a competent project manager (the "Project Manager") satisfactory to FedEx. Contractor shall replace the Project Manager upon FedEx's written request, but Contractor may not replace the Project Manager without the prior written consent of FedEx unless the Project Manager ceases to be in Contractor's employ. The Project Manager will represent Contractor and all directions that FedEx gives to him or her will be as binding as if given directly to executive officers of Contractor. The Project Manager must devote his or her full time to the Work. The Project Manager will direct, coordinate and supervise all Work, inspect all Materials delivered to the Site to ascertain whether or not they comply with the requirements of the Contract Documents, and reject all non-conforming Work.

Section 16.02. Order and Discipline. Contractor shall enforce strict discipline and good order at all times among its employees and the employees of its Subcontractors. If any person at the Site appears to be incompetent, disorderly or intemperate, or disrupts or interferes with the Work in any way, or is in any other way disqualified for or unfaithful to the job entrusted to him or her, Contractor shall replace such person, or cause such person to be replaced, immediately and shall prohibit the further use of such person in connection with the Work unless FedEx grants written permission for such use.

Section 16.03. Cleaning Up. (a) At the end of each working day, Contractor shall remove all waste materials, rubbish and debris from and about the Work as well as all surplus materials and will leave the Site clean in accordance with the requirements of the Contract Documents.

(b) Contractor must store all Materials delivered in connection with the Work in locations FedEx approves and must store and handle those Materials as appropriate to ensure safety, to preclude the inclusion of any foreign substances, and to prevent any discoloration or damage that might reduce the effectiveness of such Materials when incorporated into the Project.

Section 16.04. Inspection of the Work. (a) FedEx, DPD and their respective designees, including, without limitation, the inspecting architect that FedEx must retain in accordance with the terms of Section 3.08 of the Redevelopment Agreement, must have access to the Work at all times for the purpose of inspecting it, and Contractor shall provide proper facilities for such access and inspection. If FedEx's or DPD's designees discover any defective Work by reason of

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any such inspection, FedEx shall report it to Contractor and Contractor shall correct it promptly at Contractor's expense.

(b) If the Contract Documents, FedEx's written instructions or applicable laws, ordinances, rules or regulations of any public authority require that special tests or inspections be conducted with respect to any of the Work, Contractor shall notify FedEx of its readiness for inspection and testing and, if a public authority, rather than FedEx, will perform the test or inspection, the date set for such test or inspection. FedEx will make its inspections promptly and, where practicable, at the source of supply. If Contractor or any Subcontractor covers any of the Work without the approval or consent of any public authority having jurisdiction over the Work and if that public authority requires that it be uncovered, Contractor shall cause it to be uncovered for examination, at Contractor's expense. If Contractor or any Subcontractor covers any of the Work without FedEx's approval or consent and if FedEx requires that it be uncovered, Contractor shall cause it to be uncovered for examination; if the examination reveals that the uncovered portion of the Work does not satisfy the requirements of the Contract Documents, Contractor will bear the expense of uncovering the Work; if the examination reveals that the uncovered portion of the Work does satisfy the requirements of the Contract Documents; FedEx will bear the expense of uncovering the Work.

#### ARTICLE 17

##### PERMITS, LICENSES, LAWS AND REGULATIONS

Section 17.01. Contractor To Secure All Permits. Contractor warrants to FedEx that it possesses all licenses required by applicable law or regulation to undertake the design and construction of the Project. Contractor shall secure all permits and licenses and shall pay all fees necessary for the lawful and proper performance of the Work.

Section 17.02. Contractor's Responsibilities. Contractor shall give all notices required by virtue of, and shall familiarize itself with, and shall comply with, all laws, ordinances, rules, regulations and orders of any public authority having jurisdiction over the Work. If Contractor believes that any of the Contract Documents are at variance with any such laws, ordinances, rules, regulations or orders, it shall promptly notify FedEx in writing and seek appropriate changes to the Contract Documents. If Contractor fails to give that notice or performs any of the Work in contravention of those laws, ordinances, rules, regulations or orders, Contractor shall indemnify and hold FedEx harmless from and against any resulting fines, penalties, judgments or damages, including reasonable attorney's fees, imposed on or incurred by FedEx.



ARTICLE 18  
TAXES

Section 18.01. Taxes. (a) The Contractor's Fee includes, and Contractor shall pay, all taxes, excises, duties and assessments ("Taxes") arising out of Contractor's performance of the Work and levied, assessed or imposed by any governmental or quasi-governmental authority or any agency of any such authority having jurisdiction over the Site. Taxes do not include real estate or other ad valorem taxes or special assessments assessed on the basis of the value of the Site and the Project.

(b) Unless Contractor is contesting in good faith the validity of any of those Taxes or its application to the Work, Contractor shall promptly pay and discharge when due all Taxes that Contractor undertakes to pay in accordance with the terms of Section 18.01(a), together with any interest and penalties. If the taxing authority levies, assesses or imposes any such Taxes upon FedEx, FedEx will notify Contractor and Contractor shall promptly pay and discharge the Taxes, but, upon the written request and at the expense of Contractor, FedEx shall assist Contractor in contesting the validity or applicability to the Work of such Taxes. If FedEx receives a refund of all or any part of any Taxes (including a refund of interest or penalties), which Contractor paid to the taxing authority in connection with the Project, FedEx shall promptly remit to Contractor the amount of the refund after deducting the expenses that FedEx incurred in connection with the contest and that Contractor has not previously reimbursed to FedEx.

(c) Contractor shall indemnify and hold FedEx and its officers, directors and employees harmless from any and all Taxes that Contractor undertakes to pay in accordance with the terms of Section 18.01(a).

ARTICLE 19  
SHOP DRAWINGS AND SAMPLES:  
MATERIAL TESTING

Section 19.01. Definitions. (a) As used in this Agreement, the term "Shop Drawings" means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data that Contractor or any Subcontractor prepare and that illustrate a portion of the Work.

(b) As used in this Agreement, the term "Samples" means physical examples furnished by Contractor to illustrate materials, equipment or workmanship.

(c) Contractor shall provide Shop Drawings and Samples at FedEx's request.

Section 19.02. Submission Schedule. Within one week after FedEx's approval of the Final Plans and Specifications, Contractor shall provide FedEx with a schedule for submission of Shop Drawings and Samples. The sequence of submissions must permit an orderly review by FedEx, and the schedule must allow reasonable time for FedEx's review according to the number and complexity of Shop Drawings or Samples in each submission. The schedule must allow not less than seven business days for FedEx to review a Shop Drawing or Sample

Section 19.03. Submissions. (a) Contractor shall review, stamp with its approval and submit in accordance with the approved submission schedule properly identified Shop Drawings and Samples required by the Contract Documents or otherwise required by FedEx.

(b) By approving and submitting Shop Drawings and Samples, Contractor represents that it has verified all field measurements, field construction criteria, materials, catalog numbers and other data and that it has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

Section 19.04. FedEx's Review. (a) FedEx or its agent will review submitted Shop Drawings and Samples promptly so as to cause no unreasonable delay in the Work, but FedEx will conduct its review solely for the purpose of determining the extent of conformity with the design concept of the Work and the information in the Contract Documents. FedEx's approval of a Shop Drawing or Sample will not indicate approval of an assembly in which the item depicted functions.

(b) FedEx's approval of Shop Drawings or Samples will not relieve Contractor of responsibility for any deviation from the requirements of the Contract Documents unless Contractor has informed FedEx in writing of such deviation at the time of submission and FedEx has approved the specific deviation. Further, FedEx's approval will not relieve Contractor from responsibility for subsequently discovered errors or omissions in the Shop Drawings or Samples.

Section 19.05. Corrections. Contractor shall make any corrections FedEx requires and shall resubmit the required number of corrected Shop Drawings or new Samples until FedEx approves the submission.

Section 19.06. Prior Approval Required. Contractor may not commence any portion of the Work requiring submission of a Shop Drawing or Sample until FedEx has approved the submission. Contractor shall perform all such portions of the Work in accordance with the approved Shop Drawings and Samples and the Contract Documents.

Section 19.07. Material Testing. (a) Unless otherwise specified in the Contract Documents, Contractor will perform at FedEx's expense all testing of materials and equipment. At its option, FedEx may accept the manufacturer's certified mill or laboratory certificate in lieu of special testing of Materials, with respect to which the

Contract Documents require testing, or it may require a certificate from a recognized commercial testing laboratory satisfactory to it certifying that the Materials have been tested within a period acceptable to FedEx and that they conform to the requirements of the Contract Documents.

(b) FedEx may require that Contractor make actual tests of any products or Materials and submit a report on the results of such tests. A recognized testing laboratory satisfactory to FedEx must make those tests. Contractor shall perform at its expense all tests required to determine the suitability of items Contractor proposes for substitution for items specified in the Contract Documents.

## ARTICLE 20

### FEDEX'S AND DPD'S RIGHT TO AUDIT

Section 20.01. Right of Audit. Contractor shall keep separate, full and accurate records of all costs incurred and items billed in connection with the Work, which records will be open to inspection, copying and audit by FedEx, the City or their respective authorized representatives during the period commencing with the date of the execution of this Agreement and ending on the date that is three years after the date of Final Payment. Those records must be sufficiently detailed to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated to the Project and to monitor the Project. At FedEx's request, Contractor must make those records, including, without limitation, Subcontractors' sworn statements, Subcontracts, purchase orders, lien waivers, paid receipts and invoices, available at Contractor's expense for inspection, copying and audit at a FedEx office in the Chicago metropolitan area that FedEx designates. In addition, Contractor shall make it a condition of all Subcontracts that the Subcontractor shall keep accurate records of costs incurred and items billed in connection with their respective portions of the Work and that such records will be open to inspection, copying and audit by FedEx, the City or their respective authorized representatives during the period commencing with the date of the execution of the Subcontract and ending on the date that is two years after the date of the completion of the Subcontractor's portion of the Work. Contractor's failure to include such a requirement in any Subcontract will be an Event of Default and grounds for FedEx's immediate termination of this Agreement.

Section 20.02. Review of Subcontracts. Upon request, Contractor shall provide FedEx with an executed copy of all Subcontracts and purchase orders relating to the Work.

## ARTICLE 21

### SEPARATE CONTRACTS

Section 21.01. FedEx's Right to Award Separate Contracts. FedEx reserves the right to award other contracts in connection with work at

or in the vicinity of the Site and Contractor agrees to cooperate fully and not to unreasonably interfere with the work of such other contractors, including, without limitation, the contractor that FedEx engages to remediate the Hazardous Substances present on the Site.

Section 21.02. Cooperation. Contractor shall afford FedEx's other contractors the opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with their work.

Section 21.03. Inspection of Other Contractor's Work. If any part of the Work depends for proper execution or results upon the work of any of FedEx's other contractors, Contractor shall inspect and promptly report to FedEx any discrepancies or defects in such work that render it unsuitable for proper execution or results. Contractor's failure to inspect and report as required above will constitute an acceptance of the other contractor's work as fit and proper to receive the Work.

Section 21.04. Responsibility For Damage. If Contractor causes damage to the work or property of any of FedEx's other contractors, Contractor shall settle with the other contractor by agreement or arbitration if the other contractor is amenable to settlement in that manner. If the other contractor sues FedEx for any damages that it alleges it sustained by reason of Contractor's fault, FedEx shall notify Contractor, who shall defend those suits at its own expense. Contractor shall satisfy any resulting judgment and shall reimburse FedEx for all reasonable attorneys' fees and court costs that FedEx may incur as a result of that suit.

## ARTICLE 22

### CONTRACTOR'S WARRANTIES

Section 22.01. Warranty of Title. Contractor warrants to FedEx that (1) title to all Work, including Materials, covered by an Application and Certificate for Payment (in the form of the attached Exhibit D-2), whether incorporated in the Work or not, will pass to FedEx upon Contractor's receipt of payment, free and clear of all liens, claims, security interests or encumbrances ("Liens"), and (11) neither Contractor nor any Subcontractor acquired any of the Work covered by an Application and Certificate for Payment subject to an agreement under the terms of which a Lien is retained by the seller or supplier.

Section 22.02. Special Warranties. When special guaranties or warranties are required by the Contract Documents for specific parts of the Work, Contractor shall procure certified copies of those guaranties or warranties, countersign them and submit them to FedEx in triplicate. Among the special warranties that Contractor must procure will be a roof manufacturer's warranty issued with respect to the roof installed as part of the Project; that warranty must extend for a

minimum of 10 years from the date the installation of the roof is completed. 32

Section 22.03. Assignment of Warranties. Effective upon the expiration of the Warranty Period established in Section 22.05(b) below, Contractor assigns to FedEx any and all assignable warranties of manufacturers and suppliers (other than Contractor) of materials, equipment or other items used in the performance of the Work. At FedEx's request, Contractor shall assist at FedEx's expense in enforcing FedEx's rights arising under those warranties.

Section 22.04. Warranty of Performance Standards. Contractor warrants to FedEx that it will design the Project in accordance with the standard of care and other accepted standards that nationally recognized engineering and construction organizations engaged in performing comparable services exercise. Contractor shall indemnify and hold FedEx harmless from and against all losses, damages or costs, including, without limitation, reasonable attorneys' fees, FedEx may incur or sustain in connection with the correction of any portion of the Project that is deficient or defective as a result of Contractor's failure to comply with those standards.

Section 22.05. General Warranties. (a) In addition to any special guaranties or warranties contained in the Contract Documents, Contractor warrants to FedEx that all Materials furnished in the performance of the Work will be new unless otherwise specified and that any Work (including the design work performed by Contractor) will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these standards will be defective.

(b) If, within the period (the "Warranty Period") that expires two years after the Substantial Completion Date, FedEx finds any of the Work to be defective, Contractor shall provide at its expense all labor and material necessary to correct it promptly after receipt of a written notice from FedEx.

(c) If Contractor fails or refuses to correct defective Work in accordance with the requirements of this Section 22.05, FedEx may correct it and hold Contractor liable for all expenses and damages FedEx incurs as a result.

(d) In addition to the foregoing warranty, a fresh warranty period of one year will apply, under the same terms and conditions as the original warranty, to any work, materials or design supplied in the correction of defective Work undertaken in accordance with the terms of this Section 22.05. That fresh warranty period will commence on the date FedEx accepts Contractor's original warranty work.

Section 22.06. Limitations on Warranty. The warranty is provided in Section 22.05 is limited in certain respects and is conditioned on the following:

- (i) FedEx must use the Project only in accordance with the design capacities and criteria established for it. Any misuse of the Project may void the warranty set forth in Section 22.05 and may void any manufacturers' or other warranties that Contractor assigns to FedEx in accordance with the terms of Section 22.03.
- (11) In addition to the foregoing, the warranty set forth in Section 22.05 will not extend to the electrical systems, plumbing systems, heating, ventilating or air conditioning systems, fire protection systems or other mechanical systems servicing the Project, unless one or more professionals experienced in the maintenance and servicing of those systems maintain and operate those systems in compliance with the manufacturers' specifications for the systems at least through the Warranty Period.
- (iii) The warranty set forth in Section 22.05 does not obligate Contractor to perform any routine or appropriate regular maintenance of the Project.

#### ARTICLE 23

##### FEDEX'S RIGHT TO DO WORK

Section 23.01. FedEx's Right to Do Work. If Contractor neglects to prosecute the Work properly or fails to do anything required by the Contract Documents and FedEx does not receive satisfactory assurance of due performance from Contractor within seven business days after the date on which FedEx makes written demand for such assurance, FedEx may make good any deficiencies in the Work without prejudice to any other remedy it may have under the terms of this Agreement or at law or in equity and deduct all costs of doing so from any payment then due or later becoming due to Contractor.

Section 23.02. Correction of Work Before Final Payment (a) Contractor shall promptly remove from the Site at Contractor's expense all Materials or other items FedEx rejects as failing to conform to the Contract Documents, whether incorporated in the Work or not, and Contractor shall promptly replace and re-execute at Contractor's expense its original work to comply with the Contract Documents. In addition, Contractor shall bear the expense of repairing all work of FedEx's other contractors damaged by that removal or replacement.

(b) If Contractor does not remove rejected Materials or other items within a reasonable time (as determined by FedEx), FedEx may do so and store them at Contractor's expense. If Contractor does not pay the expense of the removal and storage within 10 business days after demand, FedEx may sell those items at auction or at private sale and

shall account for the net proceeds of the sale after deducting all expenses of removal and storage that FedEx incurs.

ARTICLE 24  
INSURANCE

Section 24.01. Contractor To Maintain Insurance. At all times during design of the Project and the performance of the Work, Contractor shall maintain in force the insurance described in the attached Exhibit F in the amounts and with the endorsements specified both in that Exhibit and elsewhere in this Article 24 and shall fulfill such additional insurance requirements as the City of Chicago Risk Management Department establishes with respect to the Project from time to time in accordance with the terms of the Redevelopment Agreement.

Section 24.02. Contractor's Insurance Primary. Each insurance policy that Contractor maintains in accordance with the requirements of this Article 24 must be written as a primary policy and not contributing with, or in excess of, any insurance coverage or self-insurance programs that FedEx or the City maintains.

Section 24.03. No Cancellation. Each insurance policy that Contractor maintains in accordance with the requirements of this Article 24 must be written by insurance companies licensed to do business in the state where the Site is located, must be in form and substance satisfactory to FedEx and the City, and must contain an endorsement requiring the delivery of written notice to FedEx and the City at least 60 days in advance of the date on which the insurer intends any cancellation, termination or change to become effective.

Section 24.04. Named Insureds. Each liability insurance policy that Contractor maintains in accordance with the requirements of this Article 24 must name FedEx and its officers, directors and employees and the City and its employees, elected officials, agents and representatives as additional insureds, and each property damage insurance policy that Contractor maintains in accordance with the requirements of this Article 21 must include an endorsement whereby the insurer waives its rights of subrogation against FedEx and the City and acknowledges that any waiver or release of liability made by an insured in favor of another party in advance of the occurrence of a loss giving rise to a claim under that policy will not adversely affect the coverage intended to be afforded by that policy or prejudice the right of the insured to receive proceeds in accordance with the terms of that policy.

Section 24.05. Insurance Certificates. Promptly following execution of this Agreement, Contractor shall furnish to FedEx certificates of insurance reflecting that each policy required by virtue of the terms of this Article 24 is in force and that Contractor has paid the premium for that policy in full. At least 15 days in advance of the expiration of the term of each policy that Contractor

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maintains in accordance with the requirements of this Article 24, Contractor shall provide to FedEx and the City a certificate evidencing the renewal of such policy. Certificates issued with respect to contractual liability insurance must specifically acknowledge the provisions of Article 27.

Section 24.06. Builder's Risk Insurance. Throughout the period that Contractor prosecutes the Work, FedEx shall maintain in force with respect to the Project a policy of multiple peril (all-risk) builder's risk insurance that has been written on a completed value basis in an amount equal to the full replacement cost of the Project. That policy must provide that no cancellation, surrender or material change will become effective unless Contractor receives written notice at least 30 days in advance of the time at which that cancellation, surrender or material change becomes effective. Upon Contractor's request, FedEx shall furnish to Contractor a certificate of insurance reflecting that the policy required by virtue of the terms of this Section 24.06 is in force and that FedEx has paid the premium for that policy in full.

## ARTICLE 25 BONDS

Section 22.01. Contractor's Bonds. At FedEx's request, Contractor shall furnish and keep in force throughout the performance of the Work a performance bond and a labor and material payment bond in the amount of the Contractor's Fee, as the same may be modified from time to time. Each bond must name FedEx and the City as obligees, must be in the form of American Institute of Architects Form No. A311 or its equivalent, and must be executed by a surety having an AA rating that FedEx and the City approve. The cost of the bonds is included in the Contractor's Fee and FedEx shall pay that cost in accordance with the payment procedure described in the attached Exhibit D-1.

## ARTICLE 26 INDEMNIFICATION

Section 26.01. General Indemnification. Contractor shall indemnify, defend and hold FedEx, its officers, directors and employees, the City and its elected officials and employees harmless from and against any and all liabilities, damages, losses, expenses, demands, claims, suits or judgments, including reasonable attorneys' fees and expenses, for the death of or bodily injury to any person and for the loss of, damage to or destruction of any property in any manner arising out of the negligent or intentional acts or omissions of Contractor, the Subcontractors, the respective agents and employees of Contractor and the Subcontractors or any other person for whose acts or omissions any of the foregoing persons or entities may be responsible.



Section 26.02. Labor Indemnity. Contractor shall indemnify, defend and hold FedEx harmless from and against (1) any and all administrative and judicial actions and judgments initiated or entered against FedEx in connection with any labor related activity arising from Contractor's performance of the Work and (ii) any and all losses and expenses that FedEx sustains or incurs by reason of any such action or judgment, including, without limitation, reasonable attorneys' fees. As used in this Agreement, "labor related activity" includes, without limitation, strikes, walk-outs, informational or organizational picketing, use of placards, distribution of hand-outs, leaflets or other similar acts at or in the vicinity of the Site or in the vicinity of any other facility where FedEx conducts business. FedEx shall advise Contractor if any labor related activity occurs and Contractor shall arrange for the legal representation necessary to protect FedEx's interest, provided FedEx's General Counsel approves that representation.

Section 26.03. Royalties and Patents. Contractor shall pay all royalties and license fees in any way relating to the Work, shall defend all suits or claims for infringement of any proprietary rights arising from the design of the Project or the performance of the Work and shall indemnify, defend and hold FedEx harmless from loss on account of any such suit or claim.

Section 26.04. City Claims. Contractor shall indemnify and hold FedEx harmless from and against all claims that the City asserts against FedEx under the terms of Section 13 of the Redevelopment Agreement by virtue of (i) Contractor's failure to comply with any term of this Agreement, the inclusion of which was required by the terms of the Redevelopment Agreement, or (ii) Contractor's failure to pay Subcontractors or materialmen in connection with the Work.

## ARTICLE 27

### FEDEX'S RIGHT TO OCCUPY

Section 27.01. Early Occupancy by FedEx. FedEx reserves the right to occupy or use ahead of schedule any substantially completed or partially completed portion of the Project when such occupancy and use are in its best interest. If FedEx's occupancy or use increases the cost of the Work (other than for corrections that are Contractor's responsibility) or delays its completion, Contractor is entitled to extra compensation or an extension of the Substantial Completion Date, or both. Contractor must make its claims for extra compensation or postponement of the Substantial Completion Date in writing within seven calendar days after FedEx's written notification to Contractor of its intent to so occupy or use portions of the Work.

Section 27.02. Corrections After Occupancy. After FedEx occupies any substantially completed portion of the Work, Contractor may not disrupt FedEx's occupancy to make corrections in the Work, for which Contractor is responsible, but must make those corrections at

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Contractor's expense after FedEx's normal working hours, if FedEx requires such scheduling.

Section 27.03. Heating, Ventilating and Air-Conditioning Systems. FedEx may require the use and operation of any completed heating, ventilating or air-conditioning equipment included in the Work when it occupies any substantially completed portion of the Work. In such event, FedEx may require Contractor to operate such equipment and shall reimburse Contractor for the costs associated with such operation, but Contractor shall be responsible for the careful and proper operation of such equipment. The parties will adjust the Contractor's Fee, if appropriate, by means of Change Orders to reflect the additional costs Contractor incurs by virtue of the foregoing.

ARTICLE 28  
COMPLIANCE WITH LAWS

Section 28.01. Compliance with Laws. (a) To the extent applicable to it, Contractor shall comply with the affirmative action requirements applicable to contracts with government contractors as set forth in Title 41 of the Code of Federal Regulations and the Immigration and Reform Act of 1986.

(b) Contractor shall employ, and shall permit its Subcontractors to employ, only persons who are legally authorized to work in the United States and to have, and to cause its Subcontractors to have, an I-9 employment authorization form, if required, for each person respectively employed by them.

(c) Contractor shall indemnify, defend and hold FedEx and its officers, directors and employees harmless from and against any and all claims, demands, actions, administrative proceedings, liabilities, and judgments arising from the failure of Contractor or any of its Subcontractors to comply with the provisions of this Section 28.01 and all losses and expenses sustained or incurred by FedEx by reason of such claims, demands, actions, administrative proceedings, liabilities and judgments, including, without limitation, reasonable attorneys' fees.

ARTICLE 29  
DEFAULT: FEDEX'S RIGHT TO TERMINATE

Section 29.01. Events of Default. (a) If any of the following events of default (the "Events of Default") occur, the aggrieved party may terminate this Agreement at its option:

- (1) If either party fails in the full and punctual payment of any sum due to the other and such failure continues for more than 10 business days after the defaulting party's receipt of notice that such payment is late;

- (11) If either party fails in the performance of any obligation that it undertakes under the terms of this Agreement and that involves more than the payment of money to the other party and that failure continues for more than 10 business days after the defaulting party's receipt of notice from the other party or for such longer period as may be reasonably required to rectify the failure through the exercise of prompt, diligent and continuous effort;
- (11i) If either party files a voluntary petition in bankruptcy; files any petition or answer seeking reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statute, law or regulation of the United States; seeks, consents to, or acquiesces in, the appointment of any trustee for a substantial portion of its assets; makes any general assignment for the benefit of creditors; or admits in writing its inability to pay its debts generally as they become due;
- (iv) If creditors of either party file a petition against that party seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation of the United States and, notwithstanding efforts of the affected party to cause such petition to be dismissed or stayed, such petition remains effective for an aggregate period of 60 days (whether or not consecutive); or, if any trustee, receiver or liquidator of the affected party is appointed in connection with such petition, that appointment remains effective for an aggregate period of 60 days (whether or not consecutive), notwithstanding efforts of the affected party to cause such appointment to be vacated or stayed; or
- (v) If a court of competent jurisdiction enters an order for relief in any proceeding initiated by or against either party in accordance with any present or future statute, law or regulation of the United States pertaining to bankruptcy or the reorganization, composition, adjustment or liquidation of the debts and obligations of debtors.

No termination accomplished in accordance with the foregoing will constitute an election of remedies.

(b) Upon the occurrence of an Event of Default by Contractor, FedEx may terminate this Agreement without prejudice to any other remedy available to FedEx by giving Contractor written notice at least

seven days in advance of the effective date of the termination. Upon that termination, FedEx may take possession of all or some of Contractor's materials, tools, equipment and appliances and complete the Work by such means as FedEx determines to be appropriate. Upon that termination, FedEx may withhold all further payment from Contractor until the Work is fully completed. If the amount of the Contractor's Fee not previously disbursed to Contractor exceeds the aggregate of (i) the expense to FedEx of completing the Work, including compensation for additional managerial and administrative services, and (ii) FedEx's losses and damages arising from Contractor's default, FedEx shall pay to Contractor the amount of the excess. If the total of (i) the expense to FedEx of completing the Work and (ii) FedEx's losses and damages arising from Contractor's default exceeds the amount of the Contractor's Fee not previously disbursed to Contractor, Contractor shall pay the deficiency to FedEx on demand, but FedEx's receipt of those monies will not constitute an election of remedies by FedEx.

(c) Upon the occurrence of an Event of Default by FedEx, Contractor may retain any and all sums FedEx previously paid, but Contractor's retention of those sums will neither limit or impair rights Contractor may have as a result of FedEx's default nor constitute an election of remedies. Upon the occurrence of an Event of Default by FedEx, Contractor may also terminate this Agreement, remove any Materials for which FedEx has not previously made payment and any equipment and tools from the Site and recover from FedEx, to the extent not previously paid, payment for those portions of the Work Contractor had completed as of the date of termination and all other damages to which Contractor is lawfully entitled by virtue of the termination.

Section 29.02. Assignment of Subcontracts. If FedEx terminates this Agreement in accordance with the terms of Section 29.01, it may require Contractor to assign to it all or some of its Subcontracts, Materials, leased equipment and any other commitments that FedEx chooses to take by assignment in its sole discretion, and Contractor shall promptly execute and deliver to FedEx written assignments of those Subcontracts and commitments.

ARTICLE 30  
ALTERNATIVE DISPUTE RESOLUTION

Section 30.01. Alternative Dispute Resolution. (a) To the extent permitted by law, the parties shall attempt in good faith to resolve any dispute arising out of, or relating to the breach, termination or validity of, this Agreement in the following manner:

- (1) Either party may give the other party written notice of any dispute not resolved in the normal course of business. Project managers of both parties, at levels at least one step above the project personnel who have previously been involved in the dispute,

will meet at a mutually acceptable time and place within 10 days after the date of the delivery of that notice and as often after that time as they reasonably deem necessary for the purpose of exchanging relevant information and attempting to resolve the dispute.

- (11) If the project managers fail to resolve the dispute within 30 days after the date of the dispute notice, or if the project managers fail to meet within the ten-day period specified above, both parties will refer the dispute to senior executives, who have authority to settle the dispute. In connection with the referral, the project managers will promptly prepare and exchange memoranda, which state the issues in dispute and each party's position in the dispute, which summarize the negotiations that have taken place, and to which they attach all relevant documentation. Following that exchange, each party's project manager will furnish copies of both parties' position memoranda to the senior executive within that party's organization to whom the dispute has been referred. The senior executives will meet for negotiations at a mutually agreed time and place within 45 days after the date of the delivery of the dispute notice.

(b) If, following the referral of the matter to their senior executives, the parties fail to resolve the dispute within 60 days after the date of the dispute notice, the parties will attempt in good faith to resolve the controversy or claim in accordance with the Center for Public Resources Model ADR Procedures for the Mediation of Business Disputes. Notwithstanding any provisions in those procedures, the parties may not litigate any claim or dispute except as otherwise provided in this Agreement.

(c) The parties shall finally settle any dispute not resolved by means of those mediation procedures within 60 days after the initiation of those procedures by arbitration conducted expeditiously in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes by three (3) arbitrators, with each party selecting one (1) arbitrator and the two (2) chosen arbitrators selecting the third. The United States Arbitration Act, 9 U.S.C. § 1-16, will govern the arbitration and any court having jurisdiction of the dispute may enter judgment upon the award rendered by the arbitrators. The place of arbitration will be Chicago, Illinois. If the dispute involves the payment of compensation by one party to the other, the parties shall empower the arbitrators to award only compensatory damages within the upper and lower limits imposed by mutual agreement of the parties. The parties each irrevocably waive in any dispute to which this Article 30 is applicable any right it may have to any damages in excess of

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compensatory damages, including, without limitation, punitive and treble damages. The parties shall share the costs of arbitration equally.

(d) If any person involved in the meetings contemplated in Section 30.01(a) above wishes an attorney to accompany him or her to any of those meetings, that person will give written notice of that intention to the other party at least three business days in advance of any meeting that that attorney will attend and the other party may also cause an attorney representing its interests to be present at each such meeting.

(e) The parties may extend any deadline specified in this Article 30 by mutual agreement.

(f) The parties will treat all negotiations conducted in accordance with the requirements of this Article 30, including, without limitation, the exchange of position memoranda, as confidential and as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and the rules of evidence of any court having jurisdiction over the dispute.

(g) If multiple disputes are pending concurrently, the parties may consolidate those disputes for purposes of the mediation and arbitration stages described above.

(h) The procedures specified in this Article 30 are the sole and exclusive procedures for the resolution of disputes to which this Article is intended to apply. Either party may seek a preliminary injunction or other preliminary judicial relief, however, if, in that party's judgment, that action is necessary for the sole purpose of avoiding irreparable harm. Despite that action, the parties will continue to participate in good faith in the procedures set forth above. All applicable limitations periods will be tolled while the procedures specified above are pending. The parties will take all action appropriate to accomplish that tolling.

(i) If either party concludes that the parties can achieve a resolution of a dispute only if one or more Subcontractors participate in the procedures contemplated in this Article 30, that party may give written notice of that conclusion to the other and, promptly following the delivery of that notice, Contractor shall cause the relevant Subcontractors to participate in these procedures. To that end, Contractor shall incorporate, or cause to be incorporated, into each Subcontract provisions that require the Subcontractor to participate in, and be bound by the outcome of, these procedures at the request of either Contractor or FedEx.

(j) The provisions of this Article 30 will survive any termination of this Agreement.

ARTICLE 31  
LIQUIDATED DAMAGES

Section 31.01. Failure To Substantially Complete the Work on Time. FedEx will suffer financial loss if Contractor fails to substantially complete the Work on or before the Substantial Completion Date. Contractor (and its sureties), therefore, shall pay to FedEx as liquidated damages and not as a penalty the sum of Five Hundred Dollars (\$500.00) per day for each of the first five calendar days after the Substantial Completion Date that the Work is not substantially complete and the sum of Two Thousand Dollars (\$2,000.00) per day for each of the sixth and subsequent calendar days after the Substantial Completion Date that the Work is not substantially complete. FedEx may deduct the amount of any liquidated damages owed by Contractor by virtue of this Section 31.01 from the Final Payment and Retainage, and Contractor shall pay any deficiency to FedEx upon demand. The amount of damages that FedEx may recover from Contractor for delay in the completion of the Work in accordance with the terms of this Section 31.01 or otherwise will not exceed Two Hundred Thousand Dollars (\$200,000.00).

ARTICLE 32  
MISCELLANEOUS

Section 32.01. Assignment. This Agreement inures to the benefit of and binds each of the parties and their respective successors and assigns, but, except as provided below, neither party may voluntarily assign or delegate the rights or duties arising under the terms of this Agreement without the prior written consent of the other party; FedEx, however, may assign all or any part of its rights and delegate all or any of its duties to a wholly-owned subsidiary.

Section 32.02. Conflicts. If a conflict exists between any provision in this Agreement and the provisions of any of the other Contract Documents, the provisions in this Agreement will prevail.

Section 32.03. Section Headings and Captions. All section headings and captions used in this Agreement are purely for convenience and will not affect the interpretation of this Agreement

Section 32.04. Exhibits. All Exhibits described in this Agreement are incorporated in and made a part of this Agreement, except that, if any inconsistency between this Agreement and the provisions of any Exhibit exists, the provisions of this Agreement will control. Terms used in an Exhibit and also used in this Agreement have the meanings established in this Agreement.

Section 32.05. Applicable Law. The laws of the State of Illinois will govern the interpretation and enforcement of this Agreement.

Section 32.06. Amendments. Except as otherwise provided to the contrary, the parties may modify this Agreement solely by means of written agreements signed on behalf of FedEx and Contractor by their respective authorized officers.

Section 32.07. Entire Agreement. This Agreement supersedes all prior understandings, representations, negotiations and correspondence between the parties and constitutes the entire agreement between them with respect to the matters described in this Agreement, and no course of dealing, course of performance or usage of trade will modify or affect the terms of this Agreement.

Section 32.08. Legality of Provisions. The invalidity, illegality or unenforceability of any provision of this Agreement will not affect or impair the validity, legality and enforceability of the remaining provisions of this Agreement.

Section 32.09. No Waiver. The failure or delay of either party to insist in any one or more cases upon the strict performance of, or adherence to, any of the terms, covenants and conditions of this Agreement or to exercise any right or remedy contained in this Agreement will not be construed as a waiver or relinquishment by either for the future of such term, covenant or condition or such right or remedy. One or more waivers of any covenant, agreement or condition by either party will not be construed as a waiver of a future breach of the same covenant, agreement or condition.

Section 32.10. Survival of Terms. The rights and obligations of the parties and, specifically, Contractor's obligations to indemnify FedEx will survive the completion of the Work, Final Acceptance, the making of Final Payment and any termination of this Agreement.

Section 32.11. Public Release of Information. Contractor shall obtain in each instance the prior written approval of FedEx concerning the exact text and timing of news releases, articles, brochures, advertisements, prepared speeches and other information releases concerning this Agreement or the Work.

Section 32.12. Counterparts. The parties may execute this Agreement in any number of counterparts and all such counterparts, taken together, will constitute a single agreement.

Section 32.13. Change Of Control. In addition to such other rights as FedEx may have, FedEx may immediately terminate this Agreement upon any change (i) in the ownership or voting control of fifty-one percent (51%) or more of the capital stock or assets of Contractor, if a corporation, or (ii) in the ownership of Contractor or its assets, if not a corporation. Contractor shall notify FedEx in writing at least 30 days before any such change in control of the capital stock, business, or assets of Contractor becomes effective



Section 32.14. Financial Information Within 120 days after the end of each fiscal year of Contractor, Contractor shall provide to FedEx a financial statement prepared with respect to its financial affairs in accordance with generally accepted accounting principles and audited by an independent, certified public accountant. In addition, Contractor shall provide to FedEx any other financial information FedEx may reasonably request from time to time.

Section 32.15. Further Assurances. Each party will take such actions, provide such documents, do such things and provide such further assurances as the other party may reasonably request during the term of this Agreement for the purpose of further memorializing and achieving the intent reflected in this Agreement.

Section 32.16. Notices. All notices, approvals, requests, consents and other communications given in accordance with the terms of this Agreement must be in writing and must be hand-delivered, sent by facsimile transmission, sent by Federal Express service or other comparable overnight express delivery service or sent by United States certified or registered mail, addressed as follows:

If to Contractor:

Walsh, Higgins & Company  
101 East Erie Street, Suite 800  
Chicago, Illinois 60611  
Attn: Gerald A. Pientka and Donald J.  
Johnson  
Facsimile No. (312) 943-9768

If to FedEx:

Federal Express Corporation  
2003 Corporate Avenue  
Memphis, Tennessee 38132  
Attn: Managing Director, Project  
Management  
Facsimile No. (901) 395-2981

and

Federal Express Corporation  
Legal Department  
1980 Nonconnah Boulevard  
Memphis, Tennessee 38132  
Attn: Managing Attorney, Real Estate  
Development & Operations  
Facsimile No. (901) 395-4758

and

Federal Express Corporation  
Regional Administrative Center  
1100 Lake Cook Road  
Buffalo Grove, Illinois 60089  
Attn: Mr. Ed Lochmayer

Any notice, approval, request, consent or other communication given or sent in a manner specified above will be deemed to have been given when received or when the addressee refuses delivery.

Section 32.17. Attorneys' Fees. If, without violating Section 30.01, a party initiates litigation against the other that relates to the Work or this Agreement, the prevailing party in that litigation is entitled to receive judgment for the attorneys' fees (including the value of services rendered by in-house counsel) and other costs it reasonably incurs in preparing for, and either prosecuting or defending, that litigation.

Section 32.18. Validity of Agreement. This Agreement is not valid or binding upon FedEx unless an officer of FedEx has executed it and FedEx's counsel has manifested his or her approval by signing or initialing this Agreement in the space provided.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

WALSH, HIGGINS & COMPANY

FEDERAL EXPRESS CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

("Contractor")

("FedEx")

Exhibit A

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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LEGAL DESCRIPTION OF THE SITE

Exhibit B

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

FORM OF NOTICE TO PROCEED

Gentlemen:

In accordance with Section 4.01 of the Construction Agreement (the "Agreement") dated \_\_\_\_\_, 1996, between Federal Express Corporation and WALSH, HIGGINS & COMPANY, you are hereby given Notice to Proceed with the Work to be performed under the terms of the Agreement.

You are directed to commence the Work not later than \_\_\_\_\_, 1996.

FedEx's Representative for the Work is \_\_\_\_\_  
\_\_\_\_\_

Very truly yours,

FEDERAL EXPRESS CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed:

\_\_\_\_\_  
"Contractor")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit C-1

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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LIST OF PRELIMINARY BASE BUILDING PLANS

Exhibit C-2

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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LIST OF PRELIMINARY INTERIOR DESIGN SPECIFICATIONS

Exhibit C-3

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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LIST OF FINAL BASE BUILDING PLANS AND SPECIFICATIONS

Exhibit C-4

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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LIST OF FINAL INTERIOR DESIGN PLANS AND SPECIFICATIONS



Exhibit D-1

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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CONTRACTOR'S FEE AND PAYMENT PROCEDURES

FedEx will pay Contractor in current funds for the design of the Project and the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Agreement, the Contractor's Fee of Seven Million Three Hundred Twelve Thousand Seven Hundred Sixty Seven Dollars (\$7,312,767.00).

FedEx shall make progress payments to Contractor in accordance with the following procedure:

- (1) On or before the 10th day of each calendar month during the design of the Project and the performance of the Work, or the next working day if the 10th day is a Saturday, Sunday or holiday, Contractor shall submit to FedEx an Application and Certificate for Payment in the form of Exhibit D-2, based on portions of the Work completed during the preceding month.
- (ii) Contractor shall accompany each Application and Certificate for Payment with (A) Contractor's invoice bearing FedEx's finance number, contract number, project title and location, (B) a Waiver of Mechanics' and Materialmen's Lien in the form of Exhibit D-3 executed by Contractor with respect to all amounts for which Contractor has sought payment in the current and all prior Applications and Certificates for Payment, (C) a Waiver of Mechanics' and Materialmen's Lien in the form of Exhibit D-3 executed by each major Subcontractor with respect to

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all amounts for which Contractor has sought payment in all prior Applications and Certificates for Payment and that FedEx has paid, (D) an invoice or statement marked "Paid" or other form of receipt furnished by each major provider of services for which Contractor incurred Soft Costs that Contractor included for payment in the Application and Certificate for Payment that Contractor most recently submitted prior to the current Application and Certificate for Payment and that FedEx has paid, (E) the certification of the Inspecting Architect that the value of that portion of the Work for which Contractor seeks payment is in place in substantial compliance with the Final Plans and Specifications, and (G) any other documentation that FedEx reasonably requests for its proper review of the Application and Certificate for Payment. The term "major Subcontractor" means a Subcontractor whose Subcontract provides for the payment of a contract sum in excess of Ten Thousand Dollars (\$10,000.00). The term "major provider" of Soft Cost services means any provider whose contract with Contractor contemplates the payment to the provider of fees in excess of Five Thousand Dollars (\$5,000.00).

- (iii) FedEx shall promptly review each Application and Certificate for Payment and approve for payment such amounts as FedEx reasonably determines to be properly due under the terms of the Agreement. FedEx shall state in writing its reason for withholding any or all of the monies requested by Contractor in an Application and Certificate for Payment.
- (iv) FedEx shall make payment on the last business day of the month in which the timely submission of an Application and Certificate for Payment occurs.
- (v) Subject to withholding occurring by virtue of Contractor's failure to satisfy all conditions to FedEx's obligation to make progress payments as set forth in Article 5 of the Agreement and this Exhibit D-1 or the exercise of the rights accorded to FedEx in Section 5.06 of the Agreement, the amount of each progress payment will be equal to the sum of (A) one hundred percent (100%) of the Soft Costs (as defined below) and amounts allocable to Contractor's general conditions for which Contractor seeks payment in the Application and Certificate for Payment and (B) the amount by which ninety percent (90%) of the value of

the Work completed through the end of the preceding month, as determined by the Inspecting Architect on the basis of the Schedule of Values attached as Exhibit D-4, exceeds that portion of the aggregate amount of progress payments previously made that is not allocable to Soft Costs and Contractor's general conditions. The term "Soft Costs" means the architectural and engineering fees, legal fees, survey costs, permit fees, soil testing costs, and impact fees that Contractor incurs in connection with the design of the Project and the Work, the aggregate amount of which will not exceed Six Hundred Twenty Four Thousand One Hundred Dollars (\$624,100.00) or such other amount as the parties may establish by means of Change Orders. The ten percent (10%) portion of the value of the Work completed through the end of the month covered by an Application and Certificate for Payment that FedEx need not disburse as part of the progress payments described above will constitute a retainage. FedEx may hold that retainage to assure Contractor's performance under the Agreement until the following provisions applicable to the disbursement of that retainage become applicable.

- (vi) If (A) prior to the time Contractor substantially completes the Work, a Subcontractor completes all of that portion of the Work that it undertakes under the terms of its Subcontract, (B) the Inspecting Architect certifies that the Subcontractor has completed that portion of the Work in substantial compliance with the Final Plans and Specifications, and (C) the Subcontractor executes and delivers a final Waiver of Mechanic's and Materialman's Lien in such form as FedEx may reasonably designate, Contractor may include in its next Application and Certificate for Payment a request for FedEx to pay, in addition to the progress payment to which Contractor is entitled by virtue of the preceding paragraph, that portion of the retainage FedEx is holding that is allocable to that Subcontractor's portion of the Work. Subject to withholding occurring by virtue of Contractor's failure to satisfy all conditions to FedEx's obligation to make progress payments as set forth in Article 5 of the Agreement and this Exhibit D-1 or the exercise of the rights accorded to FedEx in Section 5.06 of the Agreement, FedEx shall remit the additional amount to Contractor contemporaneously with the making of the

Exhibit D-2

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

---

FORM OF APPLICATION FOR PAYMENT

progress payment sought in the Application and Certificate for Payment in which Contractor seeks the payment of that additional amount. Contractor may not, however, request payment of additional amounts in accordance with the terms of this paragraph if the making of that payment would cause the amount of retainage FedEx holds at any time to be less than five percent (5%) of the value of the Work completed at that time.

Upon satisfaction of the conditions set forth in Section 5.02 of the Agreement, FedEx shall make payments for Material stored on Site or at other locations approved by FedEx in accordance with the progress payment procedures set forth above.

For Change Orders affecting the Contractor's Fee, the Contractor's Fee shall be adjusted as set forth on the applicable Change Order

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

FORM OF LIEN WAIVER

Project:

Date:

Project No.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

TO WHOM IT MAY CONCERN:

I The undersigned, \_\_\_\_\_, has  
(Contractor/Subcontractor)

been employed by \_\_\_\_\_ to furnish labor  
(Contractor)

or materials for \_\_\_\_\_  
(Description of the work)

for the Building and Premises known as \_\_\_\_\_

at \_\_\_\_\_ in \_\_\_\_\_  
(Address) City, County, State

2. The undersigned acknowledges the receipt of the sum of \$ \_\_\_\_\_; that sum represents part payment of the contract price for the work the undersigned has undertaken with

respect to the Building and the Premises described above and represents payment in full of all sums that have become due to the undersigned on account of that contract price prior to the date of the undersigned's execution of this Release. Accordingly, the undersigned waives and releases any and all liens, or any claims of right to liens, on the Building and Premises on account of labor or materials that the undersigned has furnished to date.

3 The undersigned warrants that:

- (i) all laborers that the undersigned has employed in connection with its work on the Building and Premises have been fully paid and none of those laborers has any claim of right to lien on the Building and Premises on account of labor he or she has performed in connection with the work the undersigned has undertaken with respect to the Building and Premises;
- (ii) it has not granted any security interest in connection with any material the undersigned has installed in the Building and Premises; and
- (iii) it has not assigned, and will not assign, any claim for payment or any right to perfect a lien against the Building and Premises and it has full right and power to execute this Release.

\_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, 19\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_

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

(Seal, if Corporation)

(Seal of Notary Public)

Exhibit D-4

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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SCHEDULE OF VALUES



Exhibit E

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

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FORM OF CHANGE ORDERS

Agreement No. \_\_\_\_\_

Change Order Date: \_\_\_\_\_

To Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

As provided in your Construction Agreement with Federal Express Corporation dated \_\_\_\_\_, 1996, the following changes in the Work are made:

This Change Order when signed by the parties will have the following effect:

This Change Order in no other way alters the terms and conditions of the Construction Agreement, which are ratified and confirmed other than as amended by this Change Order.

FEDERAL EXPRESS CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
("Contractor")

Title: Vice President  
("FedEx")

Exhibit F

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

---

INSURANCE REQUIREMENTS

1. Workers' Compensation and Occupational Disease
  - (a) State Statutory
  - (b) Applicable Federal (e.g. Longshoremen's) Statutory
  - (c) Employer's Liability \$500,000.00
  
2. Commercial General Liability written on an occurrence basis for bodily injury, personal injury and property damage (Including Premises--Operations'; Independent Contractors Protective; Products and Completed Operation Broad Form Property Damage; Cross Liability; Personal Injury with no exclusion pertaining to employment and contractual obligations; Contractual Liability (with no limitation endorsement))
  - (a) Bodily Injury \$ \_\_\_\_\_
  - (b) Property Damage \$ \_\_\_\_\_
  - or
  - (c) Combined Single Limit \$5,000,000
  
3. Comprehensive Automobile Liability
  - (a) Bodily Injury \$ \_\_\_\_\_
  - (b) Property Damage \$ \_\_\_\_\_
  - or
  - (c) Combined Single Limit \$2,000,000
  
4. Completed Operations and Products Liability shall be maintained for four years after final payment.

5. Property Damage Liability Insurance shall include coverage for the following hazards:

  X   X  
  X   C  
  X   U

6. If an exposure exists, Contractor shall provide Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned), with limits approved by FedEx.

7. Contractor shall carry insurance in addition to that specifically named above as follows:

Coverage: Umbrella liability coverage \$5,000,000

Professional liability covering errors and omissions (Including Contractual Liability; When policies are renewed or replaced, the policy retroactive date must coincide with or precede \_\_\_\_\_, 1996. A claims-made policy that is not renewed or replaced must have an extended reporting period of two years) \$1,000,000

Valuable Papers Insurance (With limits sufficient to pay for the re-creation and reconstruction of any plans, designs, drawings, specifications and documents produced or used in connection with the Work)

Exhibit F  
Escrow Agreement

Not applicable

Exhibit G

to that certain

Construction Agreement

between

Federal Express Corporation  
("FedEx")

and

WALSH, HIGGINS & COMPANY  
("Contractor")

---

SITE CONDITION INFORMATION

## EXHIBIT G

### PERMITTED LIENS

1. Liens or encumbrances against the Property:

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

2. Liens or encumbrances against the Property which relate to financing secured by the Property.

## EXHIBIT G

### PERMITTED LIENS

1. Liens or encumbrances against the Property:

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

2. Liens or encumbrances against the Property which relate to financing secured by the Property.



Exhibit H  
to that certain  
Construction Agreement  
between  
Federal Express Corporation  
("FedEx")  
and  
WALSH, HIGGINS & COMPANY  
("Contractor")

---

PREVAILING WAGE RATES

LLMEM1 37422.1 10/31/96 11 50 AM



Exhibit H

**FEDEX GOOSE ISLAND PROJECT BUDGET- MAY 1, 1997**

<b>LAND PURCHASE</b>	<b>\$</b>	<b>820,392.00</b>
<b>REMEDIATION</b>	<b>\$</b>	<b>1,270,280.00</b>
<b>DYNAMIC COMPACTION</b>	<b>\$</b>	<b>103,172.00</b>
<b>OGDEN AVE BRIDGE FOUNDATION</b>	<b>\$</b>	<b>80,074.00</b>
<b>SEAWALL RECONSTRUCTION</b>	<b>\$</b>	<b>1,100,000.00</b>
<b>BUILDING CONSTRUCTION</b>	<b>\$</b>	<b>7,254,521.00</b>
<b>INSPECTING ARCHITECT</b>	<b>\$</b>	<b>142,000.00</b>
<b>FEDEX EQUIPMENT</b>	<b>\$</b>	<b>1,965,000.00</b>
<b>ASSOCIATED FEES</b>	<b>\$</b>	<b>128,776.00</b>
<b>JOB TRAINING</b>	<b>\$</b>	<b>100,000.00</b>
<b>TOTAL</b>	<b>\$</b>	<b>12,964,215.00</b>



*Exhibit I*

**FEDEX- GOOSE ISLAND PROJECT  
PRIOR- EXPENDITURES  
FEES, STUDIES, ETC.**

<b>TESKA ASSOCIATES</b>	<b>\$</b>	<b>19,517.00</b>
<b>LOUIK/SCHNEIDER</b>	<b>\$</b>	<b>31,290.00</b>
<b>JAY DOHERTY &amp; ASSOCIATES</b>	<b>\$</b>	<b>73,204.00</b>
<b>CHICAGO GUARANTEE &amp; SURVEY</b>	<b>\$</b>	<b>4,765.00</b>
<b>TOTAL</b>	<b>\$</b>	<b>128,776.00</b>

**PAID INVOICES ATTACHED**

EXHIBIT J

REQUISITION FORM

State of Illinois )  
 )SS  
County of Cook )

The affiant, \_\_\_\_\_, \_\_\_\_\_ of Federal Express Corporation (the "Developer"), being duly sworn on oath deposes and says that the Developer is the owner of the Property as defined in that certain Federal Express Corporation Redevelopment Agreement between the Developer and the City of Chicago dated \_\_\_\_\_, 1996 (the "Agreement") and that:

A. This paragraph A sets forth and is a true and complete statement of all expenditures for the Project:

[Description] \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

19.5% of the Total is equal to \$ \_\_\_\_\_

B. The work paid for by the expenditures described in paragraph A has been completed.

C. This paragraph C sets forth and is a true and complete statement of all costs of TIF-Funded Improvements for the Project reimbursed by the City to date:

\$ \_\_\_\_\_

D. The Developer requests reimbursement for the following Costs of TIF-Funded Improvements:

\$ \_\_\_\_\_

E. Attached are the following documents:

1. a certification as to the status of job creation in accordance with Section 8.06 of the Agreement; and

2. a report for the year ended \_\_\_\_\_, 199\_ detailing compliance with Section 9.03 of the Agreement.

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

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

2. The Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens.

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

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

FEDERAL EXPRESS CORPORATION, a Delaware corporation

By: \_\_\_\_\_  
NAME  
TITLE

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_  
NAME  
TITLE  
City of Chicago  
Department of Planning and Development

**EXHIBIT K**

**OPINION OF DEVELOPER'S COUNSEL**

[To be retyped on the Developer's Counsel's letterhead]

\_\_\_\_\_, 1997

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

**ATTENTION:** Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to Federal Express Corporation, a Delaware corporation (the "Developer"), in connection with the construction of certain facilities located on land in the Division-Hooker Redevelopment Project Area (the "Project"). In that capacity, we have examined, among other things, the following agreements, instruments and documents of even date herewith, hereinafter referred to as the "Documents":

- (a) Federal Express Corporation Redevelopment Agreement (the "Agreement") of even date herewith, executed by the Developer and the City of Chicago (the "City");
- (b) [insert other documents including but not limited to documents related to purchase and financing of the Property and all lender financing related to the Project]; and
- (c) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, we have examined

- (a) the original or certified, conformed or photostatic copies of the Developer's (i) Articles of Incorporation, as amended to date, (ii) qualifications to do business and certificates of good standing in all states in which the Developer is qualified to do business, (iii) By-Laws, as amended to date, and (iv) records of all corporate proceedings relating to the Project; and

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

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

Based on the foregoing, it is our opinion that:

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

2. The Developer has full right, power and authority to execute and deliver the Documents to which it is a party and to perform its obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Developer's Articles of Incorporation or By-Laws or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or, to the best of our knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which the Developer is a party or by which the Developer or its properties is bound. To the best of our knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing.

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

4. Each of the Documents to which the Developer is a party has been duly executed and delivered by a duly authorized officer of the Developer, and each such Document constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, except as limited by applicable

bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

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

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

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

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

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

10. To the best of our knowledge after diligent inquiry, the Developer owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public



convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

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

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

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

Very truly yours,

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By: \_\_\_\_\_  
Name: \_\_\_\_\_

DIVISION-HOOKER TIF)

FEDERAL EXPRESS (DIVISION-HOOKER TIF)

YEAR	EXHIBIT <u>L</u>		EQUALIZED ASS. VALUE	TAX RATE	TAXES
	MINIMUM ASSESSED VALUE	ESTIMATED MULTIPLIER			
1997	\$331,519	2.1243	\$704,247	9.345%	\$0
1998	\$331,519	2.1243	\$704,247	9.345%	\$65,812
1999	\$331,519	2.1243	\$704,247	9.345%	\$65,812
2000	\$379,996	2.1243	\$807,225	9.345%	\$65,812
2001	\$379,996	2.1243	\$807,225	9.345%	\$75,435
2002	\$379,996	2.1243	\$807,225	9.345%	\$75,435
2003	\$431,439	2.1243	\$916,506	9.345%	\$75,435
2004	\$431,439	2.1243	\$916,506	9.345%	\$85,647
2005	\$431,439	2.1243	\$916,506	9.345%	\$85,647
2006	\$486,031	2.1243	\$1,032,476	9.345%	\$85,647
2007	\$486,031	2.1243	\$1,032,476	9.345%	\$96,485
2008	\$486,031	2.1243	\$1,032,476	9.345%	\$96,485
2009	\$543,965	2.1243	\$1,155,544	9.345%	\$96,485
2010	\$543,965	2.1243	\$1,155,544	9.345%	\$107,986
2011	\$543,965	2.1243	\$1,155,544	9.345%	\$107,986
2012	\$605,444	2.1243	\$1,286,145	9.345%	\$107,986
2013	\$605,444	2.1243	\$1,286,145	9.345%	\$120,190
2014	\$605,444	2.1243	\$1,286,145	9.345%	\$120,190
2015	\$605,444	2.1243	\$1,286,145	9.345%	\$120,190
2016	\$670,687	2.1243	\$1,424,740	9.345%	\$133,142
2017	\$670,687	2.1243	\$1,424,740	9.345%	\$133,142
2018	\$670,687	2.1243	\$1,424,740	9.345%	\$133,142
2019	\$739,923	2.1243	\$1,571,818	9.345%	\$146,886

**DIVISION-HOOKER TIF)**

**TAXES PAID**

**Year**

1997	\$0
1998	\$65,812
1999	\$65,812
2000	\$65,812
2001	\$75,435
2002	\$75,435
2003	\$75,435
2004	\$85,647
2005	\$85,647
2006	\$85,647
2007	\$96,485
2008	\$96,485
2009	\$96,485
2010	\$107,986
2011	\$107,986
2012	\$107,986
2013	\$120,190
2014	\$120,190
2015	\$120,190
2016	\$133,142
2017	\$133,142
2018	\$133,142
2019	\$146,886

**Total Proceeds \$2,200,977**