

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

The following is said order as passed:

*Ordered*, That the Corporation Counsel is hereby authorized and directed to enter into and execute a settlement agreement in the following matter: *Lafonso Rollins v. Police Officer G. Hamilton, Police Officer D. Lemieux, Detective Donald P. McGrath, Detective Raymond G. Krakauskay, Detective Stapleton, Detective Ernest Bell Hamilton and City of Chicago* cited as 05 C 2532, in the amount of \$9,000,000.

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DESIGNATION OF BLOMMER CHOCOLATE COMPANY AS  
PROJECT DEVELOPER AND AUTHORIZATION FOR  
EXECUTION OF REDEVELOPMENT AGREEMENT  
FOR PROPERTY AT WEST KINZIE STREET  
AND NORTH JEFFERSON STREET.

The Committee on Finance submitted the following report:

CHICAGO, February 8, 2006.

*To the President and Members of the City Council:*

Your Committee on Finance, having had under consideration an ordinance authorizing entering into and executing a redevelopment agreement with the Blommer Chocolate Company, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

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

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*

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

*Yeas* -- Aldermen Flores, Tillman, Preckwinkle, Hairston, Lyle, Beavers, Stroger, Beale, Pope, Balcer, Cárdenas, Olivo, Burke, T. Thomas, Coleman, L. Thomas, Murphy, Rugai, Troutman, Brookins, Muñoz, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Carothers, Reboyras, Suarez, Matlak, Mell, Austin, Colón, Banks, Mitts, Allen, Laurino, O'Connor, Doherty, Natarus, Daley, Tunney, Levar, Shiller, Schulter, M. Smith, Moore, Stone -- 49.

*Nays* -- None.

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

The following is said ordinance as passed:

WHEREAS, Under an ordinance adopted by the City Council ("City Council") of the City of Chicago (the "City") on January 10, 2001 and published at pages 49901 through 49982 of the *Journal of the Proceedings of the City Council of the City of Chicago* (the "*Journal*") of such date, a certain redevelopment plan and project (the "Redevelopment Plan") for the River West T.I.F. Redevelopment Project Area (the "Redevelopment Area") was approved under the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (2000 State Bar Edition), as amended (the "Act"); and

WHEREAS, Under an ordinance adopted by the City Council on January 10, 2001 and published at pages 49983 through 49990 of the *Journal* of such date, the Redevelopment Area was designated as a redevelopment project area under the Act; and

WHEREAS, Under an ordinance (the "T.I.F. Ordinance") adopted by the City Council on January 10, 2001 and published at pages 49991 through 49997 of the *Journal* of such date, tax increment allocation financing was adopted under the Act as a means of financing certain Redevelopment Area redevelopment project costs (as defined in the Act) incurred under the Redevelopment Plan; and

WHEREAS, Blommer Chocolate Company, a Delaware corporation ("Developer") is one of the leading chocolate product processors in the United States. Developer presently operates its headquarters and one (1) of its three (3) manufacturing plants (the "Plant") from an approximately one and three-tenths (1.3) acre site located at the northeast corner of West Kinzie Street and North Desplaines Street in Chicago (the "Existing Site"). Developer currently operates its Plant at the Existing Site twenty-four (24) hours a day and seven (7) days a week. Developer's Existing Site address is 600 West Kinzie Street, Chicago, Illinois 60610. The Existing Site is a part of the Chicago-Halsted Planned Manufacturing District (the "P.M.D."). The Existing Site is presently characterized by obsolete land-use and building layout. During Developer's peak season, there is often truck traffic volume and congestion

around the Existing Site, as semi-trailers are waiting to be loaded, unloaded or weighed. Developer wants to create an approximately five and five-tenths (5.5) acre industrial campus through the acquisition, in up to three (3) phases, of approximately four and two-tenths (4.2) acres of vacant or underutilized property adjacent to or near the Existing Site. Developer's redevelopment work is divided into up to three (3) phases, which includes a phase I/minimum project, and collectively all completed phases are defined as the "Project";

WHEREAS, Developer has proposed to undertake the Project in accordance with the Redevelopment Plan, the P.M.D., and under the terms and conditions of a proposed redevelopment agreement to be executed by Developer and the City; and

WHEREAS, Pursuant to Resolution 04-CDC-88 adopted by the Community Development Commission of the City of Chicago (the "Commission") on October 12, 2004 the Commission authorized the City's Department of Planning and Development ("D.P.D.") to publish notice pursuant to Section 5/11-74.4(c) of the Act of its intention to negotiate a redevelopment agreement with Developer for the Project and to request alternative proposals for redevelopment of the Redevelopment Area; and

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

WHEREAS, Since no other responsive proposals were received by D.P.D. for the redevelopment of the Redevelopment Area within thirty (30) days after such publication, pursuant to Resolution 04-CDC-88, the Commission has recommended that Developer be designated as the developer for the Project and that D.P.D. be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with Developer for the Project; now, therefore,

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

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

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

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

SECTION 4. The Mayor, the Comptroller, the City Clerk, the Commissioner (or his or her designee) and the other officers of the City are authorized to execute and deliver on behalf of the City such other documents, agreements and certificates and to do so such other things consistent with the terms of this ordinance as such officer and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this ordinance.

SECTION 5. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 6. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 7. This ordinance shall be in full force and effect immediately upon its passage.

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

*Exhibit "A".  
(To Ordinance)*

*Blommer Chocolate Company Project*

*River West*

*Redevelopment Project Area*

*Blommer Chocolate Company  
Redevelopment Agreement*

*Dated As Of \_\_\_\_\_, 2006*

*By And Between*

*The City Of Chicago*

*And*

*Blommer Chocolate Company,  
A Delaware Corporation.*

This Blommer Chocolate Company Redevelopment Agreement (the "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the City of Chicago,

an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("D.P.D."), and Blommer Chocolate Company, a Delaware corporation ("Developer").

*Recitals.*

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

B. **Statutory Authority.** The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (2004 State Bar Edition), as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

C. **City Council Authority.** To induce redevelopment under the provisions of the Act, the City Council of the City (the "City Council") adopted the following ordinances on January 10, 2001: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the River West Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the River West Redevelopment Project Area as a Redevelopment Project Area Pursuant to Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the River West Redevelopment Project Area" (the "T.I.F. Adoption Ordinance"). Collectively the three (3) ordinances are defined as the "T.I.F. Ordinances". The redevelopment project area (the "Redevelopment Area") is legally described in (Sub)Exhibit A.

D. **The Project.** Developer is one of the leading chocolate product processors in the United States. Developer presently operates its headquarters and one of its three manufacturing plants (the "Plant") from an approximately one and three-tenths (1.3) acre site located at the northeast corner of West Kinzie Street and North Des Plaines Street in Chicago (the "Existing Site"). Developer currently operates its Plant at the Existing Site twenty-four (24) hours a day and seven (7) days a week. Developer's Existing Site address is 600 West Kinzie Street, Chicago, Illinois 60610. A legal description of the Existing Site is stated in (Sub)Exhibit B-1. The Existing Site is a part of the Chicago-Halsted Planned Manufacturing District (the "P.M.D.")

which is described in (Sub)Exhibit B-2. The Existing Site is presently characterized by obsolete land-use and building layout. During Developer's peak season, there is often truck traffic volume and congestion around the Existing Site, as semi-trailers are waiting to be loaded, unloaded or weighed.

Developer wants to create an approximately five and five-tenths (5.5) acre industrial campus through the acquisition, in up to three (3) phases, of approximately four and two-tenths (4.2) acres of vacant or under utilized property adjacent to or near the Existing Site. A legal description of the property to be acquired is stated in (Sub)Exhibit B-3. Developer's redevelopment work is divided into the "Phase I/Minimum Project" which is defined in more detail in Section 3.01 and expanded redevelopment phases which are also described in Section 3.01. If no redevelopment work by Developer occurs beyond the scope of the Phase I/Minimum Project, then the work comprising the Phase I/Minimum Project is defined for purposes of this Agreement as the "Project". The completion of the Project would not reasonably be anticipated to occur without the financing contemplated in this Agreement.

E. Redevelopment Plan. The Project is being carried out in accordance with this Agreement and the City of Chicago River West Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project dated September 20, 2000 (the "Redevelopment Plan") attached as (Sub)Exhibit C, as amended from time-to-time.

F. City Financing And Assistance. Subject to Developer fulfilling its obligations under this Agreement required to obligate the City to do so, the City will make cash payments to Developer in the amounts stated in Section 4.03, to reimburse Developer out of Available Incremental Taxes (as defined below) as provided in this Agreement for the costs of the T.I.F.-Funded Improvements under the terms and conditions of this Agreement. In addition, the City may, in its discretion, issue tax increment allocation bonds ("T.I.F. Bonds") secured by Incremental Taxes (as defined below) pursuant to a T.I.F. bond ordinance (the "T.I.F. Bond Ordinance"), at a later date as described and conditioned in Section 4.06 hereof, the proceeds of which (the "T.I.F. Bond Proceeds") may be used to pay for the costs of the T.I.F.-Funded Improvements not previously paid for from Available Incremental Taxes (as defined below), or in order to reimburse the City for the costs of T.I.F.-Funded Improvements.

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

*Agreement.*

*Article One.*

*Incorporation Of Recitals.*

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

*Article Two.*

*Definitions.*

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

*Article Three.*

*The Project.*

3.01 The Project.

(a) Phase I/Minimum Project. Developer will undertake and complete the following redevelopment work, which is collectively defined as the "Phase I/Minimum Project".

(i) Acquisition of the parcel located at the northeast corner of Jefferson Street and Kinzie Street, which parcel is described in (Sub)Exhibit B-3.

(ii) Purchase and installation of approximately Thirty-One Million Dollars (\$31,000,000) worth of new equipment ("Project Equipment") at the Plant on the Existing Site. The Project Equipment's purpose is to increase the Plant's operational efficiency and output levels. A schedule of the Project Equipment and related values is stated in (Sub)Exhibit B-4. This component of the Phase I/Minimum Project is substantially completed.

(iii) Creation of a truck staging area to accommodate increased productivity and alleviate traffic congestion on public ways.

(b) Phases II and III/The Expanded Project. Developer may expand the Phase I/Minimum Project with no more than two (2) supplemental phases ("Phase II" and "Phase III"). If undertaken by Developer, Phases II and III may address the following redevelopment work:

(i) Acquisition of Permanent Index Numbers 17-09-107-004, -005 and -006, comprising the southwest corner of Grand Avenue and Jefferson Street. A legal description of these permanent index numbers is stated in (Sub)Exhibit B-3.

(ii) Acquisition of Permanent Index Numbers 17-09-112-015 and 17-09-112-020. A legal description of these permanent index numbers is stated in (Sub)Exhibit B-3.

(iii) Application by Developer for the City's vacation of Jefferson Street from Kinzie Street north to at least the south side of the intersection with Hubbard Street. Developer's application will be subject to the City's street vacation requirements then in effect, including payment terms.

(iv) Application by Developer for the City's vacation of Hubbard Street between Jefferson Street and Des Plaines Street. Developer's application will be subject to the City's street vacation requirements then in effect, including payment terms.

(v) Addition of a truck scale at the Plant.

(vi) Relocation of the existing railroad spur presently serving the Plant.

(vii) Enclosure of the proposed campus site within a tall decorative brick planter fence and the development of appropriate landscaping along Kinzie Street and Grand Avenue to create a buffer zone from residential development.

(viii) Construction of an approximately fifteen thousand seven hundred twenty-five (15,725) square foot shelter adjacent to the east side of the Plant to house the bean dumping/cleaning functions. This shelter will help to minimize dust and remove these functions from public view.

(c) Sale And Redevelopment Of Land. The City and Developer intend to enter into that certain "Agreement for the Sale and Redevelopment of Land" (the "Land Acquisition Agreement"). It is a condition precedent to Developer's obligations under this Agreement that both the Land Acquisition Agreement and this Agreement have been fully executed. The Land Acquisition Agreement is (Sub)Exhibit B-5. Under the Land Acquisition Agreement, Developer commits to acquire certain real property from the City (the "Acquisition Parcel(s)") which the City has acquired through negotiated settlements and/or through eminent domain proceedings in accordance with the terms thereof. As Developer acquires an Acquisition Parcel, Developer will record this Agreement and any related agreements



against such Acquisition Parcel under the provisions of Section 8.17 (Recording and Filing). The Existing Site together with any Acquisition Parcels acquired by Developer under the Land Acquisition Agreement, including the Acquisition Parcel identified for Phase I of the Project, are collectively defined for the purposes of this Agreement as the "Property".

(d) Project Timing. The Project will be considered started as of the date of Developer's purchase order for the first piece of Project Equipment. Developer will forward a copy of its purchase order to the City to establish the Project start date. The Project start date will be no later than \_\_\_\_\_, 20\_\_\_. The Project completion date will be on the second (2<sup>nd</sup>) anniversary of the date agreed to by Developer and the City as the date of conveyance of the final Acquisition Parcel to be purchased by Developer for inclusion in the Project. The City must be notified of and approve changes to the start and the completion date after such dates have been established. Both the start date and the completion date are subject to the provisions of Section 18.17 (Force Majeure).

(e) City And Developer Agreement On Scope. Prior to Developer's commitment to acquire each Acquisition Parcel other than the Acquisition Parcel identified for the Phase I/Minimum Project component of the Project, the City and Developer must mutually agree to the scope of redevelopment work associated with such Acquisition Parcel to be acquired.

(f) Definition Of Project. The definition of "Project" used in this Agreement includes the redevelopment work comprising the Phase I/Minimum Project and all redevelopment work comprising Phase II and Phase III undertaken by Developer, if any.

(g) Sunset Provision. If, within three (3) years after the date of this Agreement, Developer has acquired only one or more but not all of the Acquisition Parcels, this Agreement shall remain in full force and effect. If, within three (3) years after the date of this Agreement, Developer has not acquired any of the parcels described in (Sub)Exhibit B-3, then either the City or the Developer may notify the other party of its intention to terminate this Agreement and to terminate any obligations of any party to comply with the goals, terms and conditions stated in this Agreement. In such event, the City will prepare a notice of termination of this Agreement in recordable form and Developer will be responsible for recording such document under the requirements of Section 8.17 (Recording and Filing).

### 3.02 Scope Drawings And Plans And Specifications.

(a) Developer has delivered the Scope Drawings and Plans and Specifications for the Phase I/Minimum Project to D.P.D. and D.P.D. has approved them, or Developer will deliver them to D.P.D. after the Closing Date and D.P.D. will approve them at such time.

(b) As Developer acquires the Acquisition Parcel(s) which Developer intends to include in the Project, Developer will deliver Scope Drawings and Plans and Specifications for such Acquisition Parcel(s) to D.P.D. for D.P.D.'s approval.

(c) After D.P.D. has approved Scope Drawings and Plans and Specifications for any Phase, subsequent proposed changes to such Scope Drawings or Plans and Specifications will be submitted to D.P.D. as a Change Order under Section 3.04.

(d) The Scope Drawings and Plans and Specifications for any Phase will at all times conform to the Redevelopment Plan as in effect on the date of this Agreement, the P.M.D. and all applicable Federal, State and local laws, ordinances and regulations. Developer will submit all necessary documents to the City's Department of Buildings, Department of Transportation, and to such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for any Phase of the Project.

### 3.03 Project Budget.

Developer has furnished to D.P.D., and D.P.D. has approved, a Project Budget which is (Sub)Exhibit D-1, showing total costs for the Project in an amount not less than Thirty-Seven Million One Hundred Nine Thousand Five Hundred Eighty Dollars (\$37,109,580). Developer hereby certifies to the City that: (a) it has Lender Financing, if any, and Equity in an aggregate amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. Developer will promptly deliver to D.P.D. copies of any Change Orders with respect to the Project Budget required under Section 3.04.

### 3.04 Change Orders.

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

additional assistance to Developer. Notwithstanding anything to the contrary in this Section 3.04, Change Orders costing less than Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) each, to an aggregate amount of Two Million and no/100 Dollars (\$2,000,000.00), do not require D.P.D.'s prior written approval as stated in this Section 3.04, but D.P.D. will be notified in writing of all such Change Orders and Developer, in connection with such notice, will identify to D.P.D. the source of funding therefor.

### 3.05 D.P.D. Approval.

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

### 3.06 Other Approvals.

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

### 3.07 Progress Reports And Survey Updates.

Commencing after Developer has acquired legal title to the Phase I/Minimum Project Acquisition Parcel, Developer will provide D.P.D. with written quarterly construction progress reports detailing the status of the Project, including a revised completion date, if necessary (with any delay in completion date being considered a Change Order, requiring D.P.D.'s written approval under Section 3.04). Developer must also deliver to the City written monthly progress reports detailing compliance with the requirements of Section 8.10 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's M.B.E./W.B.E. Commitment) (collectively, the "City Requirements") of this Agreement. If the reports reflect a shortfall in compliance with the requirements of Sections 8.10, 10.02 and 10.03, then there must be included therewith a written plan from Developer acceptable to D.P.D. to address and cure such shortfall. At Project completion, Developer will provide 3 copies of an updated Survey to D.P.D. upon the request of D.P.D. or any lender providing Lender Financing, if any, reflecting improvements made to the Plant or the Existing Site.

### 3.08 Inspecting Agent Or Architect.

The independent agent or architect (other than Developer's architect) selected by the lender providing Lender Financing, if any, will also act as the inspecting agent or architect for D.P.D. for the Project, and any fees and expenses connected with its work or incurred by such independent agent or architect will be solely for Developer's account and will be promptly paid by Developer. The inspecting agent or architect will perform periodic inspections with respect to the Project, providing written certifications with respect thereto to D.P.D., prior to requests for disbursement for costs related to the Project.

### 3.09 Barricades.

Prior to commencing any construction requiring barricades, Developer will install a construction barricade of a type and appearance satisfactory to the City's Department of Construction and Permits, and constructed in compliance with all applicable Federal, State or City laws, ordinances, rules and regulations.

### 3.10 Signs And Public Relations.

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

### 3.11 Utility Connections.

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

### 3.12 Permit Fees.

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

### 3.13 Accessibility For Disabled Persons.

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

#### *Article Four.*

#### *Financing.*

### 4.01 Total Project Cost And Sources Of Funds.

The cost of the Project is estimated to be Thirty-Seven Million One Hundred Nine Thousand Five Hundred Eighty Dollars (\$37,109,580) to be applied in the manner set forth in the Project Budget. Such costs will be funded from the following sources:

Equity (subject to Section 4.04)	\$37,109,580	(1)
Lender Financing	(TBD)	(1)
	<hr/>	
ESTIMATED TOTAL:	\$37,109,580	(1)

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#### Notes:

- (1) All Project costs will be front-funded by Developer. Developer presently has available to it a \$120 Million line of credit from a group of five (5) banks. Developer will identify Lender Financing sources and amounts at or prior to closing, when Developer sets its financing mix. City Funds (as defined below) are to be provided to Developer only for reimbursement of the costs of T.I.F.-Funded Improvements.

#### 4.02 Developer Funds.

Equity and Lender Financing, if any, will be used to pay all Project costs, including but not limited to costs of T.I.F.-Funded Improvements. The City acknowledges that all or a portion of Developer's Equity may also come from borrowed funds that may be secured by the pledge of share interests in Developer and collateral other than Acquisition Parcels.

#### 4.03 City Funds.

(a) City Funds. City Funds may be used to reimburse Developer only for costs of T.I.F.-Funded Improvements that constitute Redevelopment Project Costs. Exhibit E states, by line item, the T.I.F.-Funded Improvements for the Project contingent upon receipt by the City of documentation satisfactory in form and substance to D.P.D. evidencing such costs and their respective eligibility as a Redevelopment Project Cost. Amounts may be reallocated by Developer among such line items at any time and from time to time without amending this Agreement, upon notice to the City.

(b) Sources Of City Funds. The City, through its Department of Planning and Development, agrees to provide reimbursement to Developer from Available Incremental Taxes for certain T.I.F.-Funded Improvements, subject to the terms, conditions and qualifications stated in this Article Four and elsewhere in this Agreement. Funds paid to Developer under this Agreement are defined as "City Funds". City Funds paid to Developer are subject to the following:

(i) Amount. The amount of City Funds to be paid to Developer is limited to the smaller of: (A) or (B) below:

(A) Six Million Five Hundred Thousand Dollars (\$6,500,000); or

(B) twenty percent (20%) of the actual costs of the Project as certified by Developer to D.P.D.

or to (C) below if (C) is a lesser amount:

(C) the total certified T.I.F.-eligible costs for acquisition and site preparation hard construction costs.

Notwithstanding the foregoing, the City may, but need not, elect in its sole and absolute discretion without regard to the Project status or any other facts and circumstances, to increase the amount of City Funds by One Million Five Hundred

Thousand Dollars (\$1,500,000) to a total of Eight Million Dollars (\$8,000,000). In making its election, the City may consider such facts and circumstances as it deems necessary or appropriate or desirable in the circumstances, including the availability of funds in the Redevelopment Area, the costs of each parcel acquired by Developer, and other matters, and may not consider other facts, circumstances and matters as it chooses. The City's election to provide additional City Funds to Developer is not subject to any standard of "reasonableness" or "course of dealing" or "usage of trade" or "standard of precedent". Developer expressly acknowledges that there has been no representation or warranties or guarantees or assurances, express or implied, by the City that all or any part of the additional One Million Five Hundred Thousand Dollars (\$1,500,000) in City Funds will be made available to Developer at any time. Developer agrees to make no verbal or written representation to anyone to the contrary. Developer has not made its plans for the Project; secured Lender Financing, if any; entered into this Agreement, or otherwise changed its position in reliance on the possibility that One Million Five Hundred Thousand Dollars (\$1,500,000) in additional City Funds will be made available to it.

Notwithstanding anything to the contrary contained in this Agreement or in the Land Acquisition Agreement, in no event shall the Developer be required to purchase any Acquisition Parcel if such purchase would, alone or in the aggregate, exceed the amount of City Funds payable to Developer under this Agreement.

(ii) Payment of City Funds. The City will pay City Funds to Developer in cash at even date when the City issues the Component Completion Certificate for each Phase of the Project and, if the final Phase of the Project is not Phase III, then the last Phase to be completed, along with any other completed Phase, shall ultimately constitute the Project, and such payment may be the final payment and the associated Certificate of Completion shall be reissued as the Certificate for the Project. Developer will request the payment of City Funds by submitting a requisition form (the "Requisition Form") to D.P.D. substantially in the form of (Sub)Exhibit M.

(iii) Letter of Credit by Developer. As a precondition to payment by the City of City Funds to Developer at the time of the issuance of the Phase I/Minimum Project Certificate of Completion, Developer will apply for and obtain an unconditional letter of credit (the "Letter of Credit") issued by a bank acceptable to D.P.D. in favor of the City as beneficiary in the amount of the planned payment of City Funds to Developer. Such Letter of Credit will be for five (5) years from the date of the Phase I/Minimum Project Certificate of Completion. If there are subsequent City Fund payments to Developer, then Developer will increase the amount of the Letter of Credit to equal the sum of all City Funds received by Developer to date. Such Letter of Credit will be substantially in the form of (Sub)Exhibit F.

(iv) Conditions for the Issuance of a Component Certificate of Completion or the Certificate. The following are preconditions to the issuance of a Component Certificate of Completion or the Certificate by the City:

(A) Developer has provided evidence in form and substance satisfactory to D.P.D. that Developer has incurred and paid for land acquisition costs or site preparation hard construction costs (but not soft costs) which qualify as T.I.F.-Funded Improvements.

(B) Developer has provided evidence in form and substance satisfactory to D.P.D. that the Phase I/Minimum Project or any subsequent phase has been completed as provided in the Project plans.

(C) The City's Monitoring and Compliance Unit has issued its clearance letter finding the Developer has fully complied with the City Requirement (M.B.E./W.B.E. city residency and prevailing wage) as requires in this Agreement for the Phase I/Minimum Project and for each subsequent Project Phase,

(D) Not less than one hundred (100) full time equivalent ("F.T.E.") permanent jobs are present at the Plant (as the Plant exists now or as may be redeveloped as part of the Project).

#### 4.04 Treatment Of Prior Expenditures And Subsequent Disbursements.

(a) Prior Expenditures. Only those expenditures made by Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to D.P.D. and approved by D.P.D. as satisfying costs covered in the Project Budget, will be considered previously contributed Equity or Lender Financing hereunder (the "Prior Expenditure(s)"). D.P.D. has the right, in its sole discretion, to disallow any such expenditure (not listed on (Sub)Exhibit G) as a prior Expenditure as of the date of this Agreement. (Sub)Exhibit G states the prior expenditures approved by D.P.D. as Prior Expenditures. Prior Expenditures made for items other than T.I.F.-Funded Improvements shall not be reimbursed to Developer, but shall reduce the amount of Equity and/or Lender Financing required to be contributed by Developer under Section 4.01.

(b) Allocation Among Line Items. Disbursements for expenditures related to T.I.F.-Funded Improvements may be allocated to and charged against the appropriate line only, and transfers of costs and expenses from one (1) line item to another may be made by the Developer from time to time and at any time, upon notice to the City and without requiring an amendment to this Agreement.

#### 4.05 Cost Overruns.

If the aggregate cost of the T.I.F.-Funded Improvements exceeds City Funds available under Section 4.03, Developer will be solely responsible for such excess



costs, and will hold the City harmless from any and all costs and expenses of completing the T.I.F.-Funded Improvements in excess of City Funds and from any and all costs and expenses of completing the Project in excess of the Project Budget.

#### 4.06 T.I.F. Bonds.

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

### *Article Five.*

#### *Conditions Precedent.*

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

##### 5.01 Project Budget.

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

##### 5.02 Scope Drawings And Plans And Specifications.

Developer will have submitted to D.P.D., and D.P.D. will have approved, the Scope Drawings and Plans and Specifications in accordance with the provisions of Section 3.02, if applicable for the Phase I/Minimum Project and shall be required to submit Scope Drawings and Plans and Specifications for the subsequent phases, if any, prior to the commencement of construction for each Phase.

##### 5.03 Other Governmental Approvals.

Prior to commencement of construction of each respective Phase of the Project, Developer will have secured all other necessary approvals and permits required

by any federal, state or local statute, ordinance, rule or regulation to begin or continue construction of the Project, and will submit evidence thereof to D.P.D.

#### 5.04 Financing.

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

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

(c) Any financing liens against the Acquisition Parcels in existence at the Closing Date will be subordinated to certain encumbrances of the City stated in this Agreement under a subordination agreement, substantially in a form of Exhibit N, executed on or prior to the Closing Date, which is to be recorded, at the expense of Developer, in the Office of the Recorder of Deeds of Cook County.

#### 5.05 Acquisition And Title.

On the Closing Date, Developer will furnish the City with a copy of the Title Policy for the Existing Site, showing Developer as the named insured. The Title Policy will be dated as of the Closing Date and will contain only those title exceptions listed as Permitted Liens on (Sub)Exhibit H hereto and will evidence the recording of this Agreement under the provisions of Section 8.17. The Title Policy will also contain the following endorsements as required by Corporation Counsel: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.0 with parking), contiguity, location, access and survey.

#### 5.06 Evidence Of Clear Title.

Not less than five (5) Business Days prior to the Closing Date, Developer, at its own expense, will have provided the City with current searches under Developer's name as follows:

Secretary of State (Illinois)	UCC search
Secretary of State (Illinois)	Federal tax lien search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax lien search
Cook County Recorder	State tax lien search
Cook County Recorder	Memoranda of judgments search
United States District Court (Northern District of Illinois)	Pending suits and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

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

#### 5.07 Surveys.

Not less than five (5) Business Days prior to the Closing Date, Developer will have furnished the City with three (3) copies of the Survey.

#### 5.08 Insurance.

Developer, at its own expense, will have insured the Plant and the Existing Site as required under Article Twelve. At least five (5) Business Days prior to the Closing Date, certificates required under Article Twelve evidencing the required coverages will have been delivered to D.P.D.

#### 5.09 Opinion Of Developer's Counsel.

On the Closing Date, Developer will furnish the City with an opinion of counsel, substantially in the form of (Sub)Exhibit I, with such changes as may be required by or acceptable to Developer's Counsel or Corporation Counsel. If Developer has engaged special counsel in connection with the Project, and such special counsel

is unwilling or unable to give some of the opinions set forth in (Sub)Exhibit I, such opinions shall be obtained by Developer from its general corporate counsel.

#### 5.10 Evidence Of Prior Expenditures.

Not less than twenty (20) Business Days prior to the Closing Date, Developer will have provided evidence satisfactory to D.P.D. of the Prior Expenditures as provided in Section 4.04(a). An audit of Developer's books and records, conducted at Developer's expense, shall constitute acceptable verification of Developer's Prior Expenditures related to machinery and equipment.

#### 5.11 Financial Statements.

Not less than fifteen (15) days prior to the Closing Date, Developer will have provided Financial Statements to D.P.D. for its 2002, 2003 and 2004 fiscal years, if available, and its most recently available unaudited interim Financial Statements.

#### 5.12 Additional Documentation.

Developer shall have provided documentation to D.P.D., satisfactory in form and substance to D.P.D., with respect to current employment profile and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds at the Plant or on the Existing Site, if any.

#### 5.13 Environmental Audit.

Not less than fifteen (15) days prior to the Closing Date, Developer has previously provided D.P.D. with copies of any Phase I environmental audits completed with respect to the Existing Site or any phase of the Project. Prior to the Closing Date, Developer will provide the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits, if any.

#### 5.14 Entity Documents.

Developer will provide a copy of its current certificate of incorporation, with all amendments, containing the original certification of the Secretary of State of its state of organization; its bylaws; certificates of good standing from the Secretary of State of its state of organization; Developer's qualification to do business in the State, and a State good standing certificate; a secretary's certificate in such form

and substance as the Corporation Counsel may require; and such other organizational documentation as the City may request.

#### 5.15 Litigation.

Developer shall provide to Corporation Counsel and D.P.D., at least ten (10) Business Days prior to the Closing Date, a description of all pending or threatened litigation or administrative proceedings involving Developer or any Affiliate of Developer, which owns, directly or indirectly, equity in Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith, and whether (and to what extent) such potential liability is covered by insurance.

### *Article Six.*

#### *Agreements With Contractors.*

##### 6.01 Bid Requirement For General Contractor And Subcontractors.

(a) Prior to entering into an agreement with a General Contractor or any subcontractor for construction of the T.I.F.-Funded Improvements, (or any phase thereof) the Developer must solicit, or must cause the General Contractor to solicit, bids from qualified contractors eligible to do business with the City of Chicago. For the T.I.F.-Funded Improvements, the Developer must select the General Contractor (or must cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Project (or phase thereof) in a timely and good and workmanlike manner. If the Developer selects a General Contractor (or the General Contractor selects any subcontractor) submitting other than the lowest responsible bid for the T.I.F.-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds.

(b) The Developer must submit copies of the Construction Contract to D.P.D. as required under Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the T.I.F.-Funded Improvements must be provided to D.P.D. within five (5) Business Days of the execution thereof. The Developer must ensure that the General Contractor will not (and must cause the General Contractor to ensure that the subcontractors will not) begin work on the Project (or any phase thereof) until the applicable Plans and Specifications for that phase have been approved by D.P.D. and all requisite permits have been obtained.

#### 6.02 Construction Contract.

Prior to the execution thereof, the Developer must deliver to D.P.D. a copy of the proposed Construction Contract with the General Contractor selected to work on the T.I.F.-Funded Improvements under Section 6.01 above, if any, for D.P.D.'s prior written approval. Within ten (10) Business days after execution of such contract by the Developer, the General Contractor and any other parties thereto, the Developer must deliver to D.P.D. and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

#### 6.03 Performance And Payment Bonds.

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

#### 6.04 Employment Opportunity.

Developer shall contractually obligate and cause the General Contractor to agree and contractually obligate such subcontractors as are necessary and appropriate to achieve compliance with the provisions of Article Ten.

#### 6.05 Other Provisions.

In addition to the requirements of this Article Six, the Construction Contract and each contract with any subcontractor shall contain provisions required under Section 3.04 (Change Orders), Section 8.10 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement), Section 10.03 (Developer's M.B.E./W.B.E. Commitment), Article Twelve (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 T.I.F.-Funded Improvements shall be provided to D.P.D. within ten (10) Business Days of the execution thereof.

### *Article Seven.*

#### *Completion Of Construction.*

#### 7.01 Certificate Of Completion Of Construction.

(a) Upon completion of the construction of the Project in accordance with the terms of this Agreement, and upon Developer's written request, D.P.D. will issue to

Developer a certificate of completion of construction in recordable form (the "Certificate") certifying that Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. Upon completion of Phase I/Minimum Project and any subsequent Phase in accordance with the terms of this Agreement and upon Developer's written request, D.P.D. will issue to Developer a Component Completion Certificate in recordable form certifying that Developer has fulfilled its obligation to complete such Phase of the Project in accordance with the terms of the Agreement.

(b) D.P.D. shall respond to Developer's written request for a Certificate or Component Completion Certificate within forty-five (45) days by issuing either a Certificate or Component Completion Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed and the measures which must be taken by Developer in order to obtain the Certificate or Component Completion Certificate. Developer may resubmit a written request for a Certificate or Component Completion Certificate upon completion of such measures, and the City shall respond within forty-five (45) days in the same manner as set forth with respect to the initial request. Such process may repeat until the City issues a Certificate or Component Completion Certificate.

(c) As provided in Section 4.03 (b)(iv), the following are preconditions to the issuance of a phase or final Certificate by the City:

(A) Developer has provided evidence in form and substance satisfactory to D.P.D. that Developer has incurred and paid for land acquisition costs or site preparation hard construction costs (but not soft costs) which qualify as T.I.F.-Funded Improvements.

(B) Developer has provided evidence in form and substance satisfactory to D.P.D. that the Phase I/Minimum Project or any subsequent Phase has been completed as provided in the Project plans.

(C) The City's Monitoring and Compliance Unit has issued its clearance letter finding the Developer has fully complied with the City Requirements (M.B.E./W.B.E., City residency and prevailing wage) as required in this Agreement for the Phase I/Minimum Project and for each subsequent Project Phase.

(D) One hundred (100) full time equivalent ("F.T.E.") jobs are present at the Plant (as the Plant exists now or as may be redeveloped as a part of the Project).

## 7.02 Effect Of Issuance Of Certificate; Continuing Obligations.

(a) The Certificate relates only to the construction of the Project, and upon its

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

(b) Those covenants specifically described at Section 8.02 (Covenant to Redevelop), Section 8.06 (Job Creation and Retention), Section 8.07 (Maintenance of Operations within the City) and Section 8.18 (Real Estate Provisions) as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate (except with respect to Section 8.02). The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon Developer or a permitted assignee of Developer who, pursuant to Section 18.15 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

#### 7.03 Notice Of Expiration Of Term Of Agreement.

Upon the expiration of the Term of the Agreement, D.P.D. will provide Developer, at Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

### *Article Eight.*

#### *Representations, Warrants And Covenants Of Developer.*

#### 8.01 General.

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

(a) Developer is a Delaware corporation, duly organized, validly existing, and qualified to do business in Illinois;



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

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

(d) Developer has acquired and will maintain good, indefeasible and merchantable fee simple title to the Existing Site and, to the extent acquired, the Acquisition Parcels (and improvements) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that Developer is contesting in good faith under Section 8.14);

(e) Developer is now, and for as long during the Term of the Agreement that Developer holds fee simple title to the Property, will remain solvent and able to pay its debts as they mature;

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

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

(h) Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which Developer or any of its assets is bound or which otherwise binds the Property or by which the Property or any property interest therein is collateral or security for any debt;

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

(j) prior to the issuance of a Certificate if it would materially affect Developer's ability to perform its obligations under this Agreement, Developer will not do any of the following without the prior written consent of D.P.D.: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose (directly or indirectly) of all or substantially all of its assets or any portion of the Property or the Project (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition; provided, however, that: individual shareholders of Developer, including any trusts or similar entities are entitled to transfer their ownership interests in Developer: (i) to other existing shareholders scheduled on a stockholder list delivered to the City on the Closing Date, (ii) to family members, and (iii) to personal trusts controlled by such individual shareholders, and (iv) to Developer for redemption;

Additionally, after the issuance of a Certificate, Developer will inform the City not less than sixty (60) days prior to any pending sale of substantially all of its assets or equity to a person or entity which is not an Affiliate of Developer;

(k) Developer has not incurred and, prior to the issuance of a Certificate, will not, without the prior written consent of the Commissioner of D.P.D., allow the existence of any liens against any Acquisition Parcel other than the Permitted Liens; or incur any indebtedness secured or to be secured by any Acquisition Parcel or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget. Liens against the Plant and the Existing Site shall not require the consent of D.P.D.. Any financing liens consented to by the Commissioner of D.P.D. will be subordinated to certain encumbrances of the City in this Agreement under a Subordination Agreement, substantially in the form of (Sub)Exhibit N;

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

(m) neither Developer nor any Affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List,

the Denied Persons Lists, the Unverified List, the Entity List and the Debarred List.

#### 8.02 Covenant To Redevelop.

Upon D.P.D.'s approval of the Scope Drawings and Plans and Specifications, and the Project Budget as provided in Sections 3.02 and 3.03, and Developer's receipt of all required building permits and governmental approvals and Developer's acquisition of the necessary Acquisition Parcels, Developer will redevelop the Project in accordance with this Agreement and all exhibits attached hereto, the T.I.F. Ordinances in effect on the date hereof, the P.M.D., the Scope Drawings, the Plans and Specifications, the Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or Developer. The covenants stated in this Section 8.02 run with the land and will be binding upon any transferee, until fulfilled as evidenced by the issuance of a Certificate.

#### 8.03 Redevelopment Plan.

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

#### 8.04 Use Of City Funds.

City Funds disbursed to Developer will be used by Developer solely to reimburse Developer for its payment for the T.I.F.-Funded Improvements as provided in this Agreement.

#### 8.05 Cooperation In Issuance Of T.I.F. Bonds Or Other Bonds.

Developer will, 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 and absolute discretion) T.I.F. Bonds or other bonds ("Bonds") in connection with the Project or the Redevelopment Area, the proceeds of which are to be used to reimburse the City for expenditures made in connection with the T.I.F.-Funded Improvements; provided, however, that any such amendments shall not have a material adverse effect on Developer or the Project. Developer will, at Developer's expense, cooperate and provide reasonable assistance in connection with the marketing of any such T.I.F. Bonds, including but not limited to providing written descriptions of the Project, and assisting the City in preparing an offering statement with respect thereto. Developer shall not be required to provide information regarding its financial condition or to make any representations. Developer shall

not have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by Developer that is determined to be false and misleading.

#### 8.06 Job Creation And Retention.

(a) During The Five (5) Year Period. Developer covenants to create or retain not less than one hundred (100) F.T.E. permanent jobs at the Plant or the Existing Site or the Project for the five (5) year period beginning on the date of the Phase I/Minimum Project Component Certificate of Completion. If Developer breaches this covenant, then Developer will have a one (1) year cure period without penalty after notice by the City of a deficient job count in which to cure the job count deficiency.

(b) After The Five (5) Year Period. Beginning upon the expiration of the five (5) year period referenced in subsection (a) above and thereafter during the Term of the Agreement, Developer covenants to create or to retain not less than one hundred fifty (150) F.T.E. permanent jobs at the Plant or the Existing Site or the Project. If Developer breaches this covenant, then Developer will have a one (1) year cure period without penalty after notice by the City of a deficient job count in which to cure the job count deficiency.

(c) Run With The Land. The covenants stated in this Section 8.06 shall run with the land and shall be binding on any transferee.

(d) At its sole discretion, the City may, from time to time, elect to suspend compliance with the covenants stated in this Section 8.06, but any such election must not be construed as: (i) a full or partial waiver of any of the City's rights under this Agreement, (ii) a full or partial restriction of the City's remedies under this Agreement, or (iii) an estoppel of any kind.

#### 8.07 Maintenance Of Operations Within The City.

(a) Developer covenants to maintain and operate its business within the City at the Existing Site for the five (5) year period beginning on the date of the Phase I/Minimum Project Component Certificate of Completion. This covenant is conditioned and will apply only so long as Developer may lawfully operate its business on a twenty-four (24) hours a day and seven (7) days a week basis; provided, however, that any restriction in Developer's operation is not caused by or the result of Developer's non-compliance with any requirement stated in Section 8.15 (Compliance with Laws), in which event this covenant will remain in full force and effect.

(b) Developer covenants to operate the Project in compliance with the Redevelopment Plan and applicable zoning laws.

(c) Run With The Land. The covenants stated in this Section 8.07 shall run with the land and shall be binding on any transferee.

(d) At its sole discretion, the City may, from time to time, elect to suspend compliance with the covenants stated in this Section 8.07, but any such election must not be construed as: (i) a full or partial waiver of any of the City's rights under this Agreement, (ii) a full or partial restriction on any of the City's remedies under this Agreement, or (iii) an estoppel of any kind.

#### 8.08 Employment Opportunity.

Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and, as applicable, to cause the General Contractor to contractually obligate each subcontractor to abide by the terms set forth in Section 8.10 (Prevailing Wage) and Article Ten (Developer's Employment Obligations). Developer will submit to D.P.D. a plan describing its compliance program prior to commencing construction of Phase I of the Project. Developer will deliver to the City written progress reports detailing compliance with the requirements of Sections 8.10, 10.02 and 10.03 of this Agreement. Such reports will be delivered to the City when the construction of the Project is twenty-five percent (25%), fifty percent (50%), seventy percent (70%) and one hundred percent (100%) complete (based on the amount of expenditures incurred in relation to the Project Budget or based on construction benchmarks stated in the Plans and Specifications for each Phase previously approved by D.P.D.). If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to D.P.D. which will outline, to D.P.D.'s satisfaction, the manner in which Developer will correct any shortfall.

#### 8.09 Employment Profile.

Developer will submit, and contractually obligate and cause the General Contractor to submit and contractually obligate any subcontractor to submit, to D.P.D., from time to time, statements of its employment profile upon D.P.D.'s request.

#### 8.10 Prevailing Wage.

Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the State Department of Labor (the

"Labor Department"), to all 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 under such contract. If the Labor Department revises such prevailing wage rates, the revised rates will apply to all such contracts. Upon the City's request, Developer will provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.10. The provisions of this Section 8.10 do not apply to the installation of machinery and equipment used in Developer's business operations.

#### 8.11 Arms-Length Transactions.

Unless D.P.D. shall have given its prior written consent with respect thereto, no Affiliate of Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any T.I.F.-Funded Improvement. Developer will provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by Developer and reimbursement to Developer for such costs using City Funds, or otherwise), upon D.P.D.'s request, prior to any such disbursement.

#### 8.12 Financial Statements.

Developer will obtain and provide to D.P.D. Financial Statements for Developer's fiscal year ended 2002, 2003 and 2004, as applicable, and each fiscal year thereafter during the period commencing on the Closing Date and ending five (5) years after the date of the Phase I/Minimum Project Certificate of Completion. In addition, Developer will submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as D.P.D. may request, if normally prepared by Developer.

#### 8.13 Insurance.

Developer, solely at its own expense, shall comply with all applicable provisions of Article Twelve (Insurance) hereof.

#### 8.14 Non-Governmental Charges.

(a) Payment Of Non-Governmental Charges. Except for the Permitted Liens, 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 and which are owned by Developer, 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, Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. Developer will furnish to D.P.D., within thirty (30) days of D.P.D.'s request, official receipts from the appropriate entity, or other proof satisfactory to D.P.D., evidencing payment of the Non-Governmental Charge in question.

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

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

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

#### 8.15 Developer's Liabilities.

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

#### 8.16 Compliance With Laws.

To the best of Developer's knowledge, the Property is, and the Project 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, including the following Municipal Code Sections: 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550 or 11-4-1560, whether or not in the performance of this Agreement. Upon the City's request, Developer will provide evidence satisfactory to the City of such compliance.

#### 8.17 Recording And Filing.

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

#### 8.18 Real Estate Provisions.

##### (a) Governmental Charges.

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

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



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

(y) Developer shall furnish a good and sufficient bond or other security satisfactory to D.P.D. in such form and amounts as D.P.D. 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 transfer or forfeiture of the Property or Project during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

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

(c) **Real Estate Taxes.**

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

(ii) **Real Estate Tax Exemption.** With respect to the Property or the Project, neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to 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 Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer will, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in (Sub)Exhibit J for the applicable year.

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

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

#### 8.19 Public Benefits Program.

On or prior to the Closing Date, Developer will make a contribution to those organizations listed on (Sub)Exhibit L ("Public Benefits Program"). On the Closing Date, Developer will provide the City with proof of Developer's contributions showing Developer's compliance with the Public Benefits Program.

#### 8.20 Broker's Fees.

Developer has no liability or obligation to pay any fees or commissions to any

broker, finder, or agent with respect to the transactions contemplated by this Agreement for which the City could become liable or obligated.

#### 8.21 No Conflict Of Interest.

Under Section 5/11-74.4-4(n) of the Act, Developer represents, warrants and covenants that, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or Developer with respect thereto, 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 Developer's business, the Property, the Project, or to Developer's actual knowledge, any other property in the Redevelopment Area.

#### 8.22 Disclosure Of Interest.

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

#### 8.23 No Business Relationship With City Elected Officials.

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

#### 8.24 Prohibition On Certain Contributions -- Mayoral Executive Order Number 05-1.

Developer agrees that Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than seven and five-

tenths percent (7.5%) ("Owners"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with Developer regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than seven and five-tenths percent (7.5%) ("Sub-owners") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together, the "Identified Parties"), will not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee: (i) after execution of this Agreement by Developer, (ii) while this Agreement or any Other Contract is executory, (iii) during the Term of this Agreement or any Other Contract between Developer and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Developer represents and warrants that from the later of: (i) February 10, 2005, or (ii) the date the City approached the Developer or the date the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

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

Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order Number 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order Number 05-1.

Developer agrees that a violation of, noncompliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order Number 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Developer intentionally violates this provision or Mayoral Executive Order Number 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

“Bundle” means to collect contributions from more than one (1) source which are then delivered by one (1) person to the Mayor or to his political fund-raising committee.

“Other Contract” means any other agreement with the City of Chicago to which Developer is a party that is: (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

“Contribution” means a “political contribution” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are “Domestic Partners” if they satisfy the following criteria:

- (A) they are each other’s sole domestic partner, responsible for each other’s common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least eighteen (18) years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two (2) of the following four (4) conditions exist for the partners:
  - 1. The partners have been residing together for at least twelve (12) months.
  - 2. The partners have common or joint ownership of a residence.
  - 3. The partners have at least two (2) of the following arrangements:
    - a. joint ownership of a motor vehicle;
    - b. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.

4. Each partner identifies the other partner as a primary beneficiary in a will.

“Political fund-raising committee” means a “political fund-raising committee” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

#### 8.25 Survival Of Covenants.

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

### *Article Nine.*

#### *Representations, Warranties And Covenants Of City.*

#### 9.01 General Covenants.

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

#### 9.02 Survival Of Covenants.

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

### *Article Ten.*

#### *Developer’s Employment Obligations*

#### 10.01 Employment Opportunity.

Developer, on behalf of itself id its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any

Affiliate of Developer operating at the Plant, the Property or on the Project (collectively, with Developer, such parties are defined herein as the "Employers", and individually defined herein as an "Employer") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010, et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time-to-time (the "Human Rights Ordinance"). Each Employer 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 nondiscriminatory 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 applicable Federal, State and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the State Human Rights Act, 775 ILCS 5/1-101, et seq. (2004 State Bar Edition, as amended) and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this section, 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 construction 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 at the Building or on the Project, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

#### 10.02 City Resident Construction Worker Employment Requirement.

(a) Developer agrees for itself and its successors and assigns, and will contractually obligate its General Contractor and will cause the General Contractor to contractually obligate such subcontractors, as are necessary and appropriate to achieve compliance with the provisions of this Section 10.02, to agree, that during the construction of the Project they will comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent (50%) of the total worker hours worked by persons on the site of the Project will be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, Developer, its General Contractor and each subcontractor will be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. Developer, the General Contractor and each subcontractor will use their respective best efforts to exceed the minimum percentage of hours stated above, and to employ neighborhood residents in connection with the Project.

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

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

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

(e) Weekly certified payroll reports (United States Department of Labor Form WH-347 or equivalent) will be submitted to the Commissioner of D.P.D. in triplicate,



which will identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

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

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

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

(i) When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Article concerning the worker hours performed by actual residents of the City or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Article. Therefore, in such a case of noncompliance, it is agreed that one-twentieth of one percent (0.0005) of the aggregate hard construction costs set forth in the Project Budget (the product of .0005 multiplied by such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly 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 Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

(j) Nothing herein provided 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.

(k) Developer shall cause or require the provisions of this Section 10.02 to be included in all construction contracts and in such subcontracts as are necessary and appropriate to achieve compliance with the provisions of this Section 10.02 related to the Project.

(l) The provisions of this Section 10.02 shall not apply to the installation of equipment or machinery for Developer's business operations at the Plant.

#### 10.03 Developer's M.B.E./W.B.E. Commitment.

Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements stated in this section, will contractually obligate the General Contractor to agree that during the Project:

(a) Consistent with the findings which support, as applicable: (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420, et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650, et seq., Municipal Code of Chicago (the "Construction Program", and collectively with the Procurement Program, the "M.B.E./W.B.E. Program"), and in reliance upon the provisions of the M.B.E./W.B.E. 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 M.B.E./W.B.E. Budget (as stated in (Sub)Exhibit D-2) must be expended for contract participation by Minority-Owned Businesses ("M.B.E.s") and by Women-Owned Businesses ("W.B.E.s"):

- (1) At least twenty-four percent (24%) by M.B.E.s.
- (2) At least four percent (4%) by W.B.E.s.

(b) For purposes of this Section 10.03 only:

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

(ii) The term "minority-owned business" or "M.B.E." shall mean a business identified in the *Directory of Certified Minority Business Enterprises* published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

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

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, Developer's M.B.E./W.B.E. commitment may be achieved in part by Developer's status as an M.B.E. or W.B.E. (but only to the extent of any actual work performed on the Project by Developer) or by a joint venture with one or more M.B.E.s or W.B.E.s (but only to the extent of the lesser of: (i) the M.B.E. or W.B.E. participation in such joint venture or (ii) the amount of any actual work performed on the Project by the M.B.E. or W.B.E.), by Developer utilizing a M.B.E. or a W.B.E. as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more M.B.E.s or W.B.E.s, or by the purchase of materials or services used in the Project from one or more M.B.E.s or W.B.E.s, or by any combination of the foregoing. Those entities which constitute both a M.B.E. and a W.B.E. shall not be credited more than once with regard to the Developer's M.B.E./W.B.E. commitment as described in this Section 10.03. In compliance with Section 2-92-730, Municipal Code of Chicago, Developer will not substitute any M.B.E. or W.B.E. General Contractor or subcontractor without the prior written approval of D.P.D.

(d) Developer must deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this M.B.E./W.B.E. commitment. Such reports will include, inter alia: the name and business address of each M.B.E. and W.B.E. solicited by Developer or the General Contractor to work on the Project, and the responses received from such solicitation; the name and business address of each M.B.E. or W.B.E. actually involved in the Project; a description of the work performed or products or services supplied; the date and amount of such work, product or service; and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this M.B.E./W.B.E. commitment. Developer will maintain or cause to be maintained records of all relevant data with respect to the utilization of M.B.E.s and W.B.E.s in connection with the Project for at least five (5) years after completion of the Project, and the City's monitoring staff will have access to all such records maintained by Developer, on five (5) Business Days'

notice, to allow the City to review Developer's compliance with its commitment to M.B.E./W.B.E. participation and the status of any M.B.E. or W.B.E. performing any portion of the Project.

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

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

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

(h) The provisions of this Section 10.03 shall not apply to the installation of equipment or machinery for Developer's business operations at the Plant.

#### *Article Eleven.*

#### *Environmental Matters*

#### 11.01 Environmental Matters.

Developer hereby represents and warrants to the City that Developer will conduct

environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws, this Agreement and all exhibits attached hereto, the Scope Drawings, the Plans and Specifications and all amendments thereto, the T.I.F. Bond Ordinance, if any, and the Redevelopment Plan.

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

*Article Twelve.*

*Insurance.*

12.01 Insurance Requirements.

Developer's insurance requirements are set forth in Schedule B which is hereby incorporated into this Agreement by reference and made a part hereof.

*Article Thirteen.*

*Indemnification.*

13.01 General Indemnity.

Developer agrees to indemnify, pay and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee", and collectively the "Indemnities") harmless from and against, any and all liabilities,

obligations, losses, damages (arising out of a third party action against the City), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever, (and including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitees shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees by a third party in any manner relating to or arising out of:

- (i) any cost overruns as described in Section 4.05;
- (ii) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or
- (iii) Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the T.I.F.-Funded Improvements or any other Project improvement; or
- (iv) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum, the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by Developer or its agents, employees, contractors or persons acting under the control or at the request of Developer; or
- (v) Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto; or
- (vi) any act or omission by Developer or any Affiliate of Developer,

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 13.01 shall survive the termination of this Agreement. Notwithstanding the foregoing provisions, Developer shall have no obligation or liability to any Indemnitee for any loss, damage (arising out of a third party action against the City), penalties, actions, judgments, suits, claims, costs, expenses or disbursements of any kind or nature whatsoever (and including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, suffered, incurred by or asserted against such Indemnitees by a third party in any manner relating to or

arising out of any action by any property owner relating, directly or indirectly, to this Agreement, the Land Acquisition Agreement or the Acquisition Parcels.

*Article Fourteen.*

*Maintaining Records/Right To Inspect.*

14.01 Books And Records.

Developer shall keep and maintain or cause to be kept and maintained, separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual costs of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to Developer's loan statements relating to the Project, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at Developer's offices for inspection, audit and examination by an authorized representative of the City, during regular business hours. Any copies requested by the City in connection with such inspection, audit and examination shall be at Developer's expense. Developer will not pay for audit expenses, salaries or fringe benefits of auditors or examiners. Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer with respect to the construction of the Project.

14.02 Inspection Rights.

Upon three (3) Business Days notice, any authorized representative of the City will have access to all portions of the Project (excluding confidential product information, trade secrets and proprietary product information) during normal business hours for the Term of the Agreement for the purpose of confirming Developer's compliance herewith.

*Article Fifteen.*

*Default And Remedies.*

15.01 Events Of Default.

The occurrence of any one or more of the following events, subject to the provisions of Section 15.03 (Curative Period), constitutes an "Event of Default" by Developer hereunder:

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

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

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

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

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

(f) the appointment of a receiver or trustee for Developer, for any substantial part of Developer's or Developer's ultimate parent, if any, assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Developer or Developer's ultimate parent, if any; 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 Developer for an amount in excess of Two Million Dollars (\$2,000,000) which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of



enforcement or execution, and is reasonably expected to have a material adverse effect on Developer's ability to perform its obligations under this Agreement;

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

(i) the dissolution of Developer; or

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

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

#### 15.02 Remedies.

(a) Until The Phase I/Minimum Project Component Certificate Of Completion. During the period from the date of this Agreement until the date of the Phase I/Minimum Project Component Certificate of Completion, upon the occurrence of an Event of Default, the City may exercise one or more of the following remedies:

(i) terminate this Agreement;

(ii) suspend or cancel disbursement of City Funds;

(iii) in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including injunctive relief, subject to the provisions of Section 18.24.

(b) During The Five (5) Year Period -- Jobs And Operations Defaults. During the five (5) year period from the date of the Phase I/Minimum Project Component Certificate of Completion, upon the occurrence of an Event of Default for: (i) a failure to maintain the requisite number of jobs under Section 8.06 (a) or (ii) a failure to maintain operations as provided in Section 8.07 the City may exercise one or more of the following remedies:

(i) terminate this Agreement;

(ii) suspend or cancel disbursement of City Funds as to any uncompleted Phase of the Project, but not as to any completed Phase;

(iii) draw upon the Letter of Credit required under Section 4.03(b)(iii).

(c) During The Five (5) Year Period -- Other Defaults. During the five (5) year period from the date of the Phase I/Minimum Project Component Certificate of Completion, upon the occurrence of an Event of Default other than an Event of Default under Section 8.06(a) or Section 8.7, the City may exercise one or more of the following remedies:

(i) terminate this Agreement;

(ii) suspend or cancel disbursement of City Funds as to any uncompleted Phase of the Project, but not as to any completed Phase;

(iii) in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including injunctive relief, subject to the provisions of Section 18.24.

(d) After The Five (5) Year Period. Upon expiration of the five (5) year period from the date of the Phase I/Minimum Project Component Certificate of Completion, and thereafter, upon the occurrence of an Event of Default, the City may exercise one or more of the following remedies:

(i) terminate this Agreement;

(ii) suspend or cancel disbursement of City Funds as to any uncompleted Phase of the Project, but not as to any completed Phase;

(iii) in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including injunctive relief, subject to the provisions of Section 18.24.

(e) Termination of Land Acquisition Agreement. If the City elects to terminate this Agreement, the Land Acquisition Agreement shall automatically terminate.

#### 15.03 Curative Period.

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

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

(b) Unless otherwise provided in this Agreement, in the event Developer fails to perform a non-monetary covenant which Developer is required to perform under this Agreement, an Event of Default will not be deemed to have occurred unless Developer has failed to cure such default within 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, Developer will not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

*Article Sixteen.*

*Mortgaging Of The Project.*

16.01 Mortgaging Of The Project.

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

(a) If a mortgagee or any other party shall succeed to Developer's interest in the Property or the Project or any portion thereof by the exercise of remedies under a mortgage or deed of trust (other than an Existing Mortgage or a Permitted Mortgage) whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.15 (Assignment), the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to Developer for all

purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

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

(c) If any mortgagee or any other party shall succeed to Developer's interest in the Property or the Project or any portion thereof by the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure or any party shall succeed to the ownership interest in Developer in connection with Lender Financing, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.15 (Assignment), the City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the executory obligations and liabilities of "Developer" hereunder, and expressly agrees to comply with all applicable City ordinances; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party shall have no liability under this Agreement for any Event of Default of Developer which occurred prior to the time such party succeeded to the interest of Developer under this Agreement, in which case Developer shall be solely responsible, likewise, the Developer shall have no liability for any Event of Default of the succeeding mortgagee that occurs following the time such party succeeded to the Developer's interests hereunder, in which case such succeeding mortgagee shall be solely liable. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(d) Prior to the issuance by the City to Developer of a Certificate under Article Seven hereof, no New Mortgage shall be executed with respect to the Acquisition Parcels or any portion thereof without the prior written consent of the Commissioner of D.P.D.. After the issuance of a final Certificate, consent of the

Commissioner of D.P.D. is not required for any such New Mortgage, provided, however, Developer may execute mortgages or other security agreements with respect to the Plant or the Existing Site after the date hereof without the approval of the Commissioner of D.P.D.

*Article Seventeen.*

*Notices.*

17.01 Notices.

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

If To The City:

City of Chicago  
Department of Planning and  
Development  
Attention: Commissioner  
121 North LaSalle Street, Room 1000  
Chicago, Illinois 60602  
Tel: (Omitted for printing purposes)  
Fax: (Omitted for printing purposes)

with copies to:

City of Chicago  
Corporation Counsel  
Attention: Finance and Economic  
Development Division  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Tel: (Omitted for printing purposes)  
Fax: (Omitted for printing purposes)

If To Developer:

Blommer Chocolate Company  
Attention: President  
600 West Kinzie Street  
Chicago, Illinois 60610  
Tel: (Omitted for printing purposes)  
Fax: (Omitted for printing purposes)

with copies to:

Polsky & Associates Ltd.  
205 North Michigan Avenue, 41<sup>st</sup> Floor  
Chicago, Illinois 60601-5924  
Tel: (Omitted for printing purposes)  
Fax: (Omitted for printing purposes)

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

#### 17.02 Developer Requests For City Or D.P.D. Approval.

Any request under this Agreement for City or D.P.D. approval submitted by Developer must comply with the following requirements:

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

*Article Eighteen.*

*Additional Provisions.*

#### 18.01 Amendments.

This Agreement and the exhibits attached hereto may not be modified or amended

except by an agreement in writing signed by the parties; provided, however, that the City in its sole discretion, may amend, modify or supplement the Redevelopment Plan, which is (Sub)Exhibit C hereto without the consent of any party hereto. For purposes of this Agreement, Developer is only obligated to comply with the Redevelopment Plan as in effect on the date of this Agreement. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce or increase any developmental, construction or job-creating obligations of Developer (including those set forth in Sections 10.02 and 10.03 hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases or decreases any time agreed for performance by the Developer by more than ninety (90) days.

#### 18.02 Complete Agreement, Construction, Modification.

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

#### 18.03 Limitation Of Liability.

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

#### 18.04 Further Assurances.

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

#### 18.05 Waivers.

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

#### 18.06 Remedies Cumulative.

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

#### 18.07 Parties In Interest/No Third Party Beneficiaries.

The terms and provisions of this Agreement are binding upon and inure to the benefit of, and are enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Developer, will be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or Developer.

#### 18.08 Titles And Headings.

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

#### 18.09 Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had



signed the same document. All such counterparts shall be deemed an original, must be construed together and will constitute one and the same instrument.

#### 18.10 Counterpart Facsimile Execution.

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

#### 18.11 Severability.

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

#### 18.12 Conflict.

In the event of a conflict between any provisions of this Agreement and the provisions of the T.I.F. Ordinances in effect as of the date of this Agreement, such ordinance(s) will prevail and control. In the event of a conflict between any provisions of this Agreement and the Land Acquisition Agreement, this Agreement will prevail and control.

#### 18.13 Governing Law.

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

#### 18.14 Form Of Documents.

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

#### 18.15 Assignment.

Prior to the issuance by the City to Developer of a Certificate, Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City; provided, however, that Developer may assign, on a collateral basis, the right to receive City Funds to a lender providing Lender Financing which has been identified to the City as of the Closing Date. Notwithstanding the issuance of such Certificate, any successor in interest to Developer under this Agreement will certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Section 8.06 (Job Creation and Retention); Section 8.07 (Maintenance of Operations within the City), Section 8.18 (Real Estate Provisions) and Section 8.25 (Survival of Covenants) hereof, for the Term of the Agreement or such shorter period of time as maybe specified in this Agreement. Developer hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

#### 18.16 Binding Effect.

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

#### 18.17 Force Majeure.

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

such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

#### 18.18 Exhibits And Schedules.

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

#### 18.19 Business Economic Support Act.

Under the Business Economic Support Act (30 ILCS 760/1 et seq. 2004 State Bar Edition, as amended), if Developer is required to provide notice under the W.A.R.N. Act, Developer will, in addition to the notice required under the W.A.R.N. Act, provide at the same time a copy of the W.A.R.N. Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

#### 18.20 Approval.

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

#### 18.21 Construction Of Words.

The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision. The term "include" (in all its forms) means

“include, without limitation” unless the context clearly states otherwise. The word “shall” means “has a duty to”.

#### 18.22 Date Of Performance.

If any date for performance under this Agreement falls on a Saturday, Sunday or other day which is a holiday under federal law or under state law, the date for such performance will be the next succeeding Business Day.

#### 18.23 Survival Of Agreements.

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

#### 18.24 Equitable Relief.

To the extent that equitable remedies are available to a party under this Agreement, such party may apply to a court for such remedies without the necessity of posting a bond or other security.

#### 18.25 Venue And Consent To Jurisdiction.

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

#### 18.26 Costs And Expenses.

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

In Witness Whereof, The parties hereto have caused this Redevelopment Agreement to be signed on or as of the day and year first above written.

Blommer Chocolate Company

City of Chicago

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

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

Printed  
Name: \_\_\_\_\_

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

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

State of Illinois )  
                          )SS.  
County of Cook )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, do hereby certify that \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ of Blommer Chocolate Company ("Developer"), a Delaware 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 him/her by the Developer, as his/her free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

[Seal]

State of Illinois )  
                          )SS.  
County of Cook )

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

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

[(Sub)Exhibits "B-2", "B-3", "B-4", "B-5", "J", "K" and "L" referred to in this Redevelopment Agreement with Blommer Chocolate Company unavailable at time of printing.]

Schedules "A" and "B" and (Sub)Exhibits "A", "B-1", "C", "D-1", "D-2", "E", "F", "G", "H", "I", "M" and "N" referred to in this Redevelopment Agreement with Blommer Chocolate Company read as follows:

*Schedule A.*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Definitions.*

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

“Act” has the meaning defined in Recital B.

“Acquisition Parcels” has the meaning defined in Section 3.01(c).

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

“Affiliate” when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any person or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

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

“Available Incremental Taxes” means an amount equal to the Incremental Taxes (as defined below) in the River West Redevelopment Project Area T.I.F. Fund (as defined below), using the year 1999 as a base year for equalized assessed valuation, less the aggregate amount of Incremental Taxes committed to other redevelopment projects in the Redevelopment Area as of the date of this Agreement which are:

1. 540 West Madison Redevelopment Agreement dated as of October 28, 2003 by and between the City and LaSalle Street Capital, Inc. (ABN/AMRO Project)

and less up to ten percent (10%) of the annual incremental tax revenues generated in the Redevelopment Area which may be reserved by the City for administrative related costs. The ABN/AMRO Project provides that the first Six Million Dollars (\$6,000,000) in Incremental Taxes in the River West Redevelopment Project Area T.I.F. Fund are claimed by the City.

“Bonds” has the meaning defined in Section 8.05.

“Bundle” has the meaning defined in Section 8.24.

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

“Certificate” means the Certificate of Completion of Construction described in Section 7.01.

“Change Order” means any amendment or modification to the Scope Drawings, the Plans and Specifications, or the Project Budget (all as defined below) and described in Section 3.02, Section 3.03 and Section 3.04, respectively.

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

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

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

“City Funds” means the funds described in Section 4.03(b).

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

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

“Component Completion Certificate” means the Certificate of Completion that the City may issue with respect to either phase of the Project under Section 7.01.

“Construction Contract” means that certain contract, dated as of \_\_\_\_\_ entered into between Developer and the General Contractor (as defined below) providing for construction of the Project together with any modifications, amendments or supplements thereto.

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

“Contractors” has the meaning defined in Section 8.24.

“Contribution” has the meaning defined in Section 8.24.

“Corporation Counsel” means the City’s Office of Corporation Counsel.

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

“Domestic Partners” has the meaning defined in Section 8.24.

“D.P.D.” has the meaning defined in the Agreement preamble.

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

“Environmental Laws” means any and all federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited



to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802, et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902, et seq.) (v) the Clean Air Act (42 U.S.C. Section 7401, et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251, et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136, et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1, et seq.); and (x) the Municipal Code of Chicago (as defined below), including the following Municipal Code Sections: 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560.

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

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

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

"Existing Site" has the meaning defined in Recital D.

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

"F.T.E." has the meaning defined in Section 4.03(b)(iv)(D).

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

"Governmental Charge" has the meaning defined in Section 8.18.

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

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

“Identified Parties” has the meaning defined in Section 8.24.

“Incremental Taxes” means such ad valorem taxes which, pursuant to the T.I.F. Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to, and when collected are paid to, the Treasurer of the City for deposit by the Treasurer into a special tax allocation fund established to pay Redevelopment Project Costs (as defined below) and obligations incurred in the payment thereof, such fund for the purposes of this Agreement being the River West Redevelopment Project Area T.I.F. Fund.

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

“Labor Department” has the meaning defined in Section 8.10.

“Land Acquisition Agreement” has the meaning defined in Section 3.01(c).

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

“Letter of Credit” has the meaning defined in Section 4.03(b)(iii).

“Mayor” has the meaning defined in Section 8.24.

“M.B.E.(s)” has the meaning defined in Section 10.03(b).

“M.B.E./W.B.E. Program” has the meaning defined in Section 10.03(a).

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

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

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

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

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

“Other Contract” has the meaning defined in Section 8.24.

“Owners” has the meaning defined in Section 8.24.

“Permitted Liens” means those liens and encumbrances against the Property and/or the Project stated in (Sub)Exhibit H.

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

“Phase” means a Phase of the Project.

“Phase I/Minimum Project” has the meaning defined in Recital D, supplemented in Section 3.01.

“Phase II” and “Phase III” have the meanings defined in Section 3.01.

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

“Plant” has the meaning defined in Recital D.

“P.M.D.” has the meaning defined in Recital D.

“Political fund-raising committee” has the meaning defined in Section 8.24.

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

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

“Project” has the meaning defined in Recital D, as supplemented in Section 3.01.

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

“Project Equipment” has the meaning defined in Section 3.01(a)(iii), as supplemented in (Sub)Exhibit B-4.

“Property” has the meaning defined in Section 3.01(c).

“Public Benefits Program” has the meaning defined in Section 8.19.

“Redevelopment Area” means the redevelopment project area as legally described in (Sub)Exhibit A.

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

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

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

“River West Redevelopment Project Area T.I.F. Fund” means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes (as defined above) will be deposited.

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

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

“Sub-owners” has the meaning defined in Section 8.24.

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

“Term of the Agreement” means the period of time commencing on the Closing Date and ending on December 31, 2025, being the end date for tax collections applicable to the twenty-third (23<sup>rd</sup>) year from the date of the River West T.I.F. Ordinances.

“T.I.F. Adoption Ordinance” has the meaning stated in Recital C.

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

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

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

“T.I.F. Ordinances” has the meaning stated in Recital C.

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

“Title Company” means \_\_\_\_\_.

“Title Policy” means a title insurance policy in the most recently revised ALTA or equivalent form, showing Developer as the insured, noting the recording of this

Agreement as an encumbrance against the Existing Site, and a subordination agreement in favor of the City with respect to previously recorded liens against the Existing Site related to Lender Financing, if any, issued by the Title Company.

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

“W.A.R.N. Act” means the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101, et seq.).

“W.B.E.(s)” has the meaning defined in Section 10.03(b).

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

*Schedule B.*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Article Twelve.*

*Insurance Requirements.*

12.01 Insurance.

Developer will provide and maintain, or cause to be provided and maintained, at Developer’s own expense, or at the expense of such other party as may be required to maintain such insurance during the Term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

(a) Prior To Execution And Delivery Of This Agreement.

(i) Workers’ Compensation And Employer’s Liability Insurance.

Workers’ Compensation and Employer’s Liability Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employer’s Liability coverage with limits of not less than One Hundred Thousand Dollars (\$100,000) each accident or illness.

(ii) Commercial General Liability Insurance (Primary And Umbrella).

Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily

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

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

(i) Workers' Compensation And Employer's Liability Insurance.

Workers' Compensation and Employer's Liability Insurance applicable to the General Contractor and subcontractors, as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) each accident or illness.

(ii) Commercial General Liability Insurance (Primary And Umbrella).

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

(iii) Automobile Liability Insurance (Primary And Umbrella).

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

(iv) Railroad Protective Liability Insurance.

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

(v) All Risk Builders Risk Insurance.

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

(vi) Professional Liability.

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

(vii) Valuable Papers Insurance.

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

(viii) Contractor's Pollution Liability.

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

(c) Other Insurance Required.

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

(d) Other Requirements.

- (i) Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Developer will submit evidence of insurance on the City Insurance Certificate Form or commercial equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer must not be deemed to be a



waiver by the City. Developer will advise all insurers of the Agreement provisions regarding insurance. Nonconforming insurance will not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this Agreement until proper evidence of insurance is provided.

- (ii) The insurance will provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.
- (iii) Any and all deductibles or self-insured retentions on referenced insurance coverages are borne by Developer.
- (iv) Developer agrees that insurers must waive rights of subrogation against the City, its employees, elected officials, agents or representatives.
- (v) Developer expressly understands and agrees that any coverages and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.
- (vi) Developer expressly understands and agrees that Developer's insurance is primary and any insurance or self-insurance programs maintained by the City will not contribute with insurance provided by Developer under the Agreement.
- (vii) The required insurance will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (viii) Developer will require its general contractor and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the contractor or subcontractors. All contractors and subcontractors will be subject to the same requirements of Developer unless otherwise specified herein.
- (ix) If Developer, contractor or subcontractor desires additional coverages, Developer, contractor and each subcontractor will be responsible for the acquisition and cost of such additional protection.
- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not, without Developer's written consent, increase such requirements.

*(Sub)Exhibit "A".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Legal Description.*

A tract of land comprised of parts of the southeast quarter of Section 5, the northeast quarter of Section 8, the northwest quarter and the southwest quarter of Section 9 and the northwest quarter of Section 16, all in Township 39 North, Range 14 East of the Third Principal Meridian, more particularly described as follows:

beginning at the intersection of the east line of North Canal Street with the south line of West Kinzie Street in the east half of the southwest quarter of Section 9 aforesaid; thence southward along the east line of said North Canal Street to the north line of the south 275.06 feet (measured perpendicularly) of Block 50 in Original Town of Chicago, according to the plat thereof recorded May 29, 1837; thence westward along said line extended east and west to the east line of North Clinton Street; thence southward along said east line of North Clinton Street to the south line of West Madison Street in the east half of said northwest quarter of Section 16; thence westward along said south line of West Madison Street to the west line of South Jefferson Street; thence northward along said west line (extended south and north) of South Jefferson Street to the north line of West Washington Street; thence eastward along the north line of said West Washington Street to the west line of North Clinton Street aforesaid; thence northward along said west line of North Clinton Street to the south line of West Randolph Street; thence westward along said south line of West Randolph Street to the west line of an 18 foot wide public alley, west of North Clinton Street; thence north along said west line of a public alley to the south line of West Lake Street; thence eastward along the south line of said West Lake Street to the west line of North Clinton Street aforesaid; thence northward along the west line of said North Clinton Street to the southerly right-of-way line of Metra (formerly C. M. St. P & P Railroad); thence westward along said southerly right-of-way line to the east line of North Jefferson Street aforesaid; thence northward along said east line of North Jefferson Street to the north line of West Carroll Avenue as vacated per Document Number 5507201 and recorded October 6, 1914; thence westward along said north line of vacated West Carroll Avenue to the west line of the west half of the said southwest quarter of Section 9, also being the centerline of North Halsted Street, said point is below the John F. Kennedy Expressway thence northward along the centerline of said North Halsted Street to the north line (extended east) of West Hubbard Street in the east half of the northeast quarter of said Section 8; thence westward along

said north line (extended east) to the west line of North Halsted Street aforesaid; thence northward along the west line of said North Halsted Street across West Grand Avenue, West Ohio Street and continuing along said west line of North Halsted Street following the widening according to Document Number 25274905 recorded December 10, 1979 to the south line of West Erie Street, said point also being the northeast corner of Lot 1 of Block 34 in Ogden's Addition to Chicago according to the plat thereof recorded December 9, 1879 as Document Number 248024; thence westward along the south line of said West Erie Street to the west line (extended south) of Lot 4 of Block 35 in Ogden's Addition to Chicago aforesaid; thence northward along the west line (extended south) of said Lot 4 to the northwest corner of said Lot 4; thence westward along the north lines of Lots 5 and 6 (extended west) of said Ogden's Addition to Chicago, to the west line of North Green Street; thence northward along the west line of said North Green Street to the southerly right-of-way line of C. & N. W. Railroad Company, said point being 169.396 feet south of the northeast corner of Block 10 in Ridgely's Addition to Chicago, according to the plat thereof recorded August 20, 1859 and re-recorded on September 19, 1878 as Document Number 194914; thence westward along said southerly right-of-way line, 36.479 feet; thence northwesterly along the southwesterly line of said C. & N. W. Railroad Company, 64.86 feet; thence westward along the south line of said C. & N. W. Railroad Company, 7.61 feet; thence northwesterly along the southwesterly line of said C. & N. W. Railroad Company, 81.64 feet; thence northward along the west line of said C. & N. W. Railroad Company to the centerline of West Huron Street; thence westward along said centerline to the east line (extended north) of Lot 1 in Block 11 in Ridgely's Addition to Chicago aforesaid; thence southward along said extended line to the south line of West Huron Street aforesaid; thence westward along the south line of said West Huron Street to the east line (extended south) of Lot 7 of Block 4 in said Ridgely's Addition to Chicago; thence northward along the east line, extended south of said Lot 7 to the south line of West Superior Street; thence westward along the south line of said West Superior Street to the east line of North Morgan Street; thence southward along east line (extended south) of said North Morgan Street to the south line of West Huron Street aforesaid; thence westward along the south line of said West Huron Street to the southeasterly line of North Morgan Street; thence southwesterly along said southeasterly line of North Morgan Street to the northeasterly line of North Milwaukee Avenue; thence northwesterly along the northeasterly line of said North Milwaukee Avenue to the west line of North Carpenter Street; thence northward along the west line of said North Carpenter Street to the south line of a 7 foot wide strip of land vacated per Document Number 21958575 and recorded on June 29, 1972; thence eastward along said vacated line, 7 feet; thence northward along the east line of said vacated line to the south line (as widened) of West Chicago Avenue, said south line of West Chicago Avenue being 40 feet south of the north line of

the west half of the northeast quarter of Section 8 aforesaid; thence westward along the south line of said West Chicago Avenue to the west line (extended south) of 66 foot wide North Carpenter Street aforesaid; thence northward along the west line (extended south) of said North Carpenter Street to the north line of said West Chicago Avenue; thence eastward along the north line of said West Chicago Avenue to the east line of North Sangamon Street; thence northward along the east line of said North Sangamon Street to the southwesterly right-of-way line of C. & N. W. Railroad Company; thence southeasterly along said southwesterly right-of-way line of C. & N. W. Railroad Company to the west line of North Lessing Street; thence southward along said west line of North Lessing Street to the north line of West Chicago Avenue; thence eastward across said West Chicago Avenue to the southwest corner of Lot 10 in J. A. Yale's Resubdivision, according to the plat thereof recorded April 25, 1873 as Document Number 94836; thence eastward along the south line of Lots 7, 8, 9 and 10, said line also being the north line of West Chicago Avenue, to the southeast corner of said Lot 7 in said J. A. Yale's Resubdivision; thence north along the east line of said Lot 7 to the northeast corner of said Lot 7, said corner also being on the south line of a 16 foot wide public alley; thence westward along the south line (extended west) of said 16 foot wide public alley to the west line of North Lessing Street; thence northward along the west line of said North Lessing Street to the southwesterly right-of-way line of C. & N. W. Railroad Company (north of West Fry Street); thence southeasterly along said southwesterly right-of-way line of C. & N. W. Railroad Company to the north line of West Chicago Avenue aforesaid; thence eastward along the north line of said West Chicago Avenue, crossing North Halsted Street to the east line of North Halsted Street; thence southward along the east line of North Halsted Street to the southwesterly line of C. & N. W. Railroad Company; thence southeasterly along said southwesterly line of C. & N. W. Railroad Company to the east line of North Desplaines Street; thence southward along the east line of said North Desplaines Street to the north line of West Grand Avenue; thence eastward along the north line of said West Grand Avenue to the southwest corner of Lot 15 in Wabansia in Section 9 (ante fire); thence southward across said West Grand Avenue to a point of intersection of the south line of said West Grand Avenue with the east line of North Jefferson Street; thence south along said east line of North Jefferson Street, 88.89 feet; thence southeasterly along the southwesterly line of a property having Permanent Index Number 17-09-112-018 to a jog in said southwesterly line; thence northeasterly along said jog line, 11.38 feet; thence southeasterly along the southwesterly line of said property to the north line of West Kinzie Street; thence eastward along the north line of said West Kinzie Street to the southwesterly line of the north branch of the Chicago River; thence southward to the point of beginning, all in the City of Chicago, Cook County, Illinois.

*(Sub)Exhibit "B-1".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Legal Description Of The Existing Blommer Site.*

Parcel 1:

Lots 5 to 8, both inclusive, in Block 60 in Russell, Mather and Robert's Addition to Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian (excepting therefrom that part thereof lying south of a straight line extending from a point on the west line of said Lot 8, 16.40 feet north of the south line thereof, southeasterly to a point on the south line of said Lot 8, 45.89 feet east of the southwest corner of said Lot 8) in Cook County, Illinois.

Parcel 2:

That part (except the north 10.00 feet of the east 55.00 feet thereof) of Block 59 in Russell, Mather and Robert's Addition to Chicago in the northwest quarter of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, lying south of the north line of the south 32.00 feet of Lot 4 in said Block 59 and south of the westerly extension of said north line, in Cook County, Illinois.

Permanent Index Number:

17-09-107-008;

17-09-107-009;

17-09-111-008;

17-09-111-009;

17-09-111-015; and

17-09-111-016.

*(Sub)Exhibit "C".*  
 (To Redevelopment Agreement With  
 Blommer Chocolate Company)

*Redevelopment Plan.*

A true and correct copy of the River West Redevelopment Project Area, Tax Increment Finance Program, Redevelopment Plan and Project dated September 20, 2000, and passed by the City Council on January 10, 2001, and any amendments thereto as of the Closing Date will be attached to this exhibit cover sheet at closing.

*(Sub)Exhibit "D-1".*  
 (To Redevelopment Agreement With  
 Blommer Chocolate Company)

*Project Budget.*

Estimated Site Costs/Preparation/Acquisition	\$ 5,225,000 <sup>(1)</sup>
Construction	600,000 <sup>(1)</sup>
Equipment	31,084,580 <sup>(1)</sup>
Soft Costs	<u>200,000<sup>(1)</sup></u>
Total Budget:	\$37,109,580 <sup>(1)</sup>

---

(1) Final numbers subject to adjustment based on the scope of the completed Project as set forth in Section 3.01.

*(Sub)Exhibit "D-2".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Construction (M.B.E./W.B.E.) Budget.*

Phase I Minimum Project:

Site Preparation, Hard Costs of Construction and related Soft Costs	\$ 100,000 <sup>(1)</sup>
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Phase II And III:

Site Preparation, Hard Costs of Construction and related Soft Costs	\$2,425,000 <sup>(1)</sup>
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(1) Final numbers are subject to adjustment based on the scope of the completed Project as such term is defined in and as set forth in Section 3.01. To the extent that the amounts set forth in this exhibit are greater than the amounts actually expended by the Developer for the costs enumerated above, then the M.B.E./W.B.E. Budget shall be adjusted accordingly.

(Sub)Exhibit "E".  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*T.I.F.-Funded Improvements.*

Estimated Site Cost/Preparation/Acquisition	\$ 5,225,000
Total:	\$ 5,225,000 <sup>(1)</sup>

(Sub)Exhibit "F".  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Form Of Letter Of Credit.*

*Local Bank  
Approved By D.P.D.  
Street Address  
Chicago, Illinois Zip*

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_, 2006.

Our Reference Number \_\_\_\_\_

Beneficiary:

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

Applicant:

Blommer Chocolate Company  
600 West Kinzie Street  
Chicago, Illinois 60610

(1) Final numbers subject to adjustment based on the scope of the completed Project as set forth in Section 3.01 and the terms and conditions stated in Section 4.03(b).



We hereby issue irrevocable standby Letter of Credit Number \_\_\_\_\_ in favor of City of Chicago for the account of the applicant up to the aggregate amount of Eight Million and no/100 United States Dollars (U.S.D. 8,000,000.00), effective immediately. This credit is issued, presentable and payable at our offices at Local Bank, Local Street, Chicago, Illinois Zip, Attention: Trade Services and expires at 4:00 P.M. local time on \_\_\_\_\_, 20\_\_.

The expiry of this credit will be deemed to be automatically extended without amendment for one (1) year from the expiry date hereof, or any future expiration date, unless at least sixty (60) days prior to any expiration date we notify the commissioner of the Department of Planning and Development of the City of Chicago, at the address listed above, by overnight delivery service or courier that we will not extend the expiry of this credit for any such additional period.

Funds under this letter of credit are available to you unconditionally against your notarized sight drafts for any sum or sums not exceeding a total of Eight Million and no/100 United States Dollars (U.S.D. 8,000,000.00) drawn on us mentioning the credit by number and purportedly signed by the Commissioner of the Department of Planning and Development of the City of Chicago or the City Comptroller of the City of Chicago (whether acting or actual). Funds drawn under this credit shall be paid in the form of a check made payable to "City of Chicago" and shall be sent by overnight delivery to the City of Chicago at the address listed above.

Partial and multiple drawings are permitted.

This credit sets forth in full the terms of our undertaking, and may be amended only by a written amendment signed by us and by the beneficiary.

Our obligations hereunder are primary obligations to the City of Chicago. We hereby engage with you we will honor drafts drawn and presented under and in compliance with the terms of this credit.

This Letter of Credit sets forth in full the terms of our undertaking, this undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and, no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement.

This is a clean Letter of Credit and no documents except for sight drafts are required.

This credit is subject to the uniform customs and practice for documentary credits, international chamber of commerce publication Number 500, 1993 Revision

("U.C.P.") and to the uniform commercial code-letters of credit, 810 ILCS 5/5-101, et seq., as amended, as in effect in the State of Illinois ("U.C.C."). To the extent the provisions of the U.C.P. and the U.C.C. conflict, the provisions of the U.C.C. shall control.

Local Bank

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

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

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

*(Sub)Exhibit "G".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Approved Prior Expenditures.*

Line Item	Name Of Firm	Contract Price	Previously Paid	Amount Of This Payment	Balance To Become Due
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
TOTAL:		\$	\$	\$	\$

*(Sub)Exhibit "H".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Permitted Liens.*

1. Liens or encumbrances against the Plant and Existing Site:
  - a. 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.
  - b. Those matters stated in the attachment to this exhibit sheet.
  
2. Liens or encumbrances against Developer or the Project, other than liens against the Plant and Existing Site:

None.

*(Sub)Exhibit "I".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Opinion Of Developer's Counsel.*

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

\_\_\_\_\_, 2006.

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

Attention: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to Blommer Chocolate Company, a Delaware corporation

“Developer”), in connection with the construction of certain improvements on or about 600 West Kinzie Street located in the River West 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) Blommer Chocolate Company Redevelopment Agreement (the “Agreement”) of even date herewith, executed by Developer and the City of Chicago (the “City”); and

(b) 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 Developer’s (i) Certificate of Incorporation, as amended to date, (ii) qualifications to do business and certificates of good standing in all states in which Developer is qualified to do business, (iii) Bylaws, as amended to date, and (iv) records of all company 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 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. Developer is a corporation duly organized, validly existing and in good standing under the laws of its state of organization, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a foreign organization 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. 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,

Developer's Certificate of Incorporation or Bylaws 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 Developer is a party or by which 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 Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than in favor of any lender providing lender financing.

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 Developer.

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

5. (Sub)Exhibit A attached hereto (a) identifies the stockholders of Developer and the number of shares held by each stockholder. To the best of our knowledge after diligent inquiry, except as set forth on (Sub)Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call exchange or other rights or restrictions with respect to any of the shares of Developer. Each outstanding share of 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 Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against Developer or affecting Developer or its property, or seeking to restrain or enjoin the performance by 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, 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 Developer or its business.

7. To the best of our knowledge after diligent inquiry, there is no default by Developer or any other party under any material contract, lease, agreement, instrument or commitment to which 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 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 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, 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 or the laws of the State of Illinois or laws of the State of Delaware relating to corporations.

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

Very truly yours,

\_\_\_\_\_

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

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

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

(Sub)Exhibit "M".  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Requisition Form.*

State of Illinois )  
                          )SS.  
County of Cook )

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

A. Expenditures for the Project, in the total amount of \$ \_\_\_\_\_, have  
been made.

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

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

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

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

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

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

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

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

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

[Developer]

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

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

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

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

\_\_\_\_\_

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

*(Sub)Exhibit "N".*  
(To Redevelopment Agreement With  
Blommer Chocolate Company)

*Subordination Agreement.*

This Subordination Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between the City of Chicago by and through its



Department of Planning and Development (the "City"), [Name Lender], a [national banking association] (the "Lender").

*Witnesseth:*

Whereas, [Description of the Project]; and

Whereas, [Description of financing and security documents] as part of obtaining financing for the Project, the Developer (the "Borrower"), have entered into a certain Construction Loan Agreement dated as of \_\_\_\_\_, 200\_\_ with the Lender pursuant to which the Lender has agreed to make a loan to the Borrower in an amount not to exceed \$\_\_\_\_\_ (the "Loan"), which Loan is evidenced by a Mortgage Note and executed by the Borrower in favor of the Lender (the "Note"), and the repayment of the Loan is secured by, among other things, certain liens and encumbrances on the Property and other property of the Borrower pursuant to the following: (i) Mortgage dated \_\_\_\_\_, 200\_\_ and recorded \_\_\_\_\_ 200\_\_ as Document Number \_\_\_\_\_ made by the Borrower to the Lender; and (ii) other security (all such agreements referred to above and otherwise relating to the Loan referred to herein collectively as the "Loan Documents"); and

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

Whereas, Pursuant to the Redevelopment Agreement, the Developer will agree to be bound by certain covenants expressly running with the Property, as set forth in Sections [8.02, 8.06 and 8.17] of the Redevelopment Agreement (the "City Encumbrances"); and

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

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

1. Subordination. All rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the

City Encumbrances. In all other respects, the Redevelopment Agreement shall be subject and subordinate to the Loan Documents. Nothing herein, however, shall be deemed to limit any of the Lender's other rights or other priorities under the Loan Documents, including without limitation the Lender's right to receive, and the Developer's ability to make, payments and prepayments of principal and interest on the Note, or to exercise its rights pursuant to the Loan Documents except as provided herein. Furthermore, nothing herein shall have any effect whatsoever on the respective rights, obligation and covenants of the Lender and the City under that certain Redevelopment Agreement dated \_\_\_\_\_, 2006. The liabilities and obligations of the Lender with respect to the City Encumbrances and the City Agreements shall be as set forth in Section 16 of the Redevelopment Agreement.

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

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

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

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

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

If To The City:

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

with a copy to:

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

If To The Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

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

the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

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

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

[Lender], [a national banking association]

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

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

City of Chicago

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

Its: \_\_\_\_\_ Commission,  
Department of Planning  
and Development

Acknowledged and Agreed to this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

[Developer], a \_\_\_\_\_

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

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



Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

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

[Seal]

\_\_\_\_\_

AUTHORIZATION FOR EXECUTION OF REDEVELOPMENT  
AGREEMENT WITH BLACK ENSEMBLE THEATER  
FOR PROPERTY AT 4440 -- 4450  
NORTH CLARK STREET.

The Committee on Finance submitted the following report:

CHICAGO, February 8, 2006.

*To the President and Members of the City Council:*

Your Committee on Finance, having had under consideration a substitute ordinance authorizing entering into and executing a redevelopment agreement with the Black Ensemble Theater, amount of note not to exceed \$6,000,000, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed substitute ordinance transmitted herewith.

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

Respectfully submitted,  
(Signed) EDWARD M. BURKE,  
*Chairman.*