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CENTRAL LOOP REDEVELOPMENT AGREEMENT

CARBON AND CARBIDE BUILDING

BY AND BETWEEN

THE CITY OF CHICAGO

AND

ST. GEORGE HOTEL L.L.C.

88

This agreement was prepared by  
and after recording return to:  
Mark Lenz  
City of Chicago Law Department  
30 North LaSalle Street, Room 1610  
Chicago, IL 60602

BOX 333-CTI

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## LIST OF EXHIBITS

Exhibit A	*Redevelopment Area
Exhibit B	*Property
Exhibit C	*TIF-Funded Improvements
Exhibit D	Redevelopment Plan
Exhibit E	Construction Contract
Exhibit F	Escrow Agreement
Exhibit G	*Permitted Liens
Exhibit H-1	*Project Budget
Exhibit H-2	*MBE/WBE Budget
Exhibit I	Approved Prior Expenditures
Exhibit J	Opinion of Developer's Counsel
Exhibit K	Requisition Form
Exhibit L	*Description of Rehabilitation Work
Exhibit M	Public Benefits Program
Exhibit N	Hotel Specifications
Exhibit O	Junior Mortgage

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

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This agreement was prepared by and  
after recording return to:  
Mark Lenz  
City of Chicago Law Department  
30 North LaSalle Street, Room 1610  
Chicago, IL 60602

## CENTRAL LOOP REDEVELOPMENT AGREEMENT ST. GEORGE HOTEL L.L.C.

This Central Loop Redevelopment Agreement, Carbide & Carbon Building ("Agreement") is made as of this 25th day of October, 2001, by and between the City of Chicago, an Illinois municipal corporation ("City"), through its Department of Planning and Development ("DPD"), and St. George Hotel L.L.C., an Illinois limited liability company ("St. George"), and HRH (Chicago) Development, LLC, an Illinois limited liability company ("HRH") (St. George and HRH collectively constituting the "Developer"), and Firstar Bank, N.A., not personally but solely as Trustee under Trust Agreement #75904 dated October 10, 2001 ("Trust").

### RECITALS

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

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

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City ("the City Council") adopted the following ordinances: On June 20, 1984: (1) "An Ordinance of the City of Chicago, Illinois approving a redevelopment plan and project (the "North Loop Plan") for the North Loop Tax Increment Redevelopment Project Area (the "North Loop Area"); (2) An Ordinance designating the North Loop Area as a redevelopment project area; and (3) An Ordinance adopting tax increment allocation financing as a means for financing certain North Loop Area redevelopment project costs (the "Original TIF Adoption Ordinance") (collectively referred to herein as the "Original TIF Ordinances"). On February 7, 1997, the North Loop Area was expanded and the North Loop Plan was amended by adoption of the following ordinances: (4) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Central Loop Redevelopment Project Area"; (5) "An Ordinance of the City of Chicago, Illinois Designating the Central Loop Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (6) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Central Loop Redevelopment Project Area" (the "TIF Adoption Ordinance"), (all ordinances listed in clauses (1) - (6) above are collectively referred to herein as the "TIF Ordinances"). The redevelopment project area referred to above (the "Redevelopment Area") is legally described in Exhibit A hereto. The City Council, by ordinance adopted January 12, 2000 (C.O.P. 23111-23188) ("Authorizing Ordinance") approved the execution of the Agreement by the parties and the disbursement of the City Funds in accordance with the terms and conditions thereof.

D. The Project: Niki Development, LLC, an Affiliate of St. George has purchased certain property located within the Redevelopment Area legally described on Exhibit B hereto ("Property"), which Property has been conveyed to the Trust for consideration ("Acquisition"). Within the time frames set forth in Section 3.01 hereof, HRH, pursuant to that certain Development Contract between HRH and St. George dated as of October 25, 2001, shall commence and complete the demolition of the four (4) story building located at 222 North Michigan Avenue ("222 North Michigan Building") and shall (a) construct a new four (4) story building consisting of, on the second floor, approximately four thousand

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three hundred twenty one (4,321) square feet of meeting and pre-function space and approximately three thousand two hundred ninety two (3,292) square foot of ballroom space, and on the first floor, approximately six thousand two hundred ten (6,210) square feet of restaurant space, and approximately fifty (50) parking spaces to be used for valet parking for guests ("New 222 North Michigan Avenue Building") and (b) the complete rehabilitation and restoration of the thirty-eight (38) story building located at 230 North Michigan Avenue ("230 North Michigan Building") close to its original condition in accordance with the Landmarks Ordinance (as defined below) and as set forth on Exhibit L and conversion of such building into a four-star full-service hotel ("Hotel") with three hundred eighty-five (385) guest rooms, including (i) seventy-five (75) suites, two hundred fifty-two (252) king rooms and fifty-seven (57) double rooms occupying approximately one hundred forty five thousand (145,000) square feet on floors three (3) through thirty-eight (38), (ii) a restaurant occupying two thousand (2,000) square feet on the first floor and lobby areas, (iii) eight hundred fifty (850) square feet of retail space on the ground floor, (iv) approximately three thousand seventy four (3,074) square feet of meeting space on the second floor, and (v) an exercise room occupying approximately one thousand nine hundred (1,900) square feet of space on the lower level (the 230 North Michigan Building, as so renovated, and the New 222 North Michigan Building are collectively referred to herein as the "Facility"). The demolition of the existing 222 North Michigan Building and the construction and renovation of the Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. Operation of the Facility: As approved by the City Council as described in the Authorizing Ordinance, the parties contemplated that the Radisson Hotel chain would operate the Hotel at the Property. The parties now agree, and the DPD has so approved, that the Hotel shall now be operated as a "Hard Rock Hotel" pursuant to the terms and conditions of that certain lease ("Lease") between the Trust and St. George (collectively as landlord) and HRH Chicago, LLC, an Illinois limited liability company (as Tenant) dated as of October 25, 2001, a true and correct copy of which has been delivered to the City. The DPD further agrees that the operation of the Hard Rock Hotel at the Facility is equivalent or superior to the requirement of this Agreement that the Hotel be operated as a four star, full service hotel as was anticipated to be operated by Radisson Hotel chain.



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F. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago Central Loop Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan ("Redevelopment Plan") attached hereto as Exhibit D, as amended from time to time.

G. City Financing: The City agrees to use, in the amounts set forth in Section 4.03 hereof, (i) a portion of the proceeds ("Bond Proceeds") of its Tax Increment Allocation Bonds (Central Loop Redevelopment Project Series 1997) issued pursuant to an ordinance adopted by the City Council on July 30, 1997 and/or Tax Increment Allocation Bonds (Central Loop Redevelopment Project) Series 2000, consisting of \$62,350,000 Taxable Series 2000B Bonds (Current Interest Bonds) (collectively, "Bonds") issued pursuant to an ordinance adopted by the City Council on May 17, 2000 ("Bond Ordinance"), and/or (ii) Incremental Taxes (as defined below), to pay for or reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement.

H. Landmark Designation: The City Council of the City designated the 230 North Michigan Building as a Chicago landmark pursuant to an ordinance adopted on May 9, 1996 (C.J.P. 21820-21823) ("Landmarks Ordinance").

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

## SECTION 1. RECITALS

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

## SECTION 2. DEFINITIONS

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

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

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

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

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

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

"Compliance Letter of Credit" shall mean the letter of credit provided to the City by the Developer as security for Developer's performance of its obligations under the Agreement in the amount of Five Hundred Thousand Dollars (\$500,000), which shall be from an institution and in a form satisfactory to the City, in the City's sole discretion.

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

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

"Developer" shall mean St. George and HRH.

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

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

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"Equity" shall mean funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in Section 4.01 hereof, which amount may be increased pursuant to Section 4.06 (Cost Overruns). Equity may include the proceeds of the syndication of historic preservation tax credits.

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

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

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

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

"General Contractor" shall be as provided for in Section 6.02.

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

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74 4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the 1997 Central Loop Project Redevelopment Project Special Tax Allocation Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

"Inspecting Architect" shall have the meaning set forth in Section 3.08 hereto.

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"Junior Mortgage" shall have the meaning set forth in Section 5.17 hereto.

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

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

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

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

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

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

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

"Payment Obligation" shall mean, collectively, the Developer's obligation to pay amounts to the City hereunder, including amounts under Sections 4.03(b), 8.01(m), 8.02 and 8.06 hereof.

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

"Plans and Specifications" shall mean initial and final construction documents containing a site plan and working drawings and specifications for the Project, including, but not limited to, all temporary and permanent signage for the Facility.

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

"Project Budget" shall mean the budget attached hereto as Exhibit H-1, showing the total cost of the Project by line item, furnished by the Developer to DPD, in accordance with Section 3.03 hereof.

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

"Reimbursement Amount" shall have the meaning set forth in Section 8.01(m) hereof.

"Requisition Form" shall mean the document, in the form attached hereto as Exhibit K, to be delivered by the Developer to DPD pursuant to Section 4.07 of this Agreement.

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

"Standards for Historic Rehabilitation" shall mean the standards determined by the Secretary of the United States Department of the Interior for rehabilitation of historic buildings, revised 1990, which are referenced on Exhibit L hereto.

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

"Term of the Agreement" shall mean the period of time commencing on the Closing Date and ending on the earlier of: (a) the date on which the Redevelopment Area is no longer in effect; or (b) December 31, 2008; provided, however, that the expiration of such Term shall in no way affect any Payment Obligations of Developer under this Agreement which is outstanding as of such date in all events shall survive the termination of this Agreement whether by virtue of the expiration of the Term of the Agreement or otherwise.

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"The Central Loop Project Redevelopment Project Area Special Tax Allocation Fund" shall mean the special tax allocation fund created and maintained by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

"TIF-Funded Improvements" shall mean those improvements and other costs 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.

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

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

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

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

## SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of Section 18.17 hereof: (i) commence construction no later than thirty (30) days from the date of execution of the Agreement ("Commencement Date"); and (ii) complete construction and rehabilitation no later than thirty (30) months after the Commencement Date (the "Completion Date"). Notwithstanding anything to the contrary, Developer understands and agrees that: (a) it shall apply for a building permit for the Project no later than February 1, 2002; and (b) within the fifteen (15) month period commencing with the date Developer applies for said building permit, Developer shall obtain said building permit



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or permits and spend at least Five Million Dollars (\$5,000,000) on acquisition costs related to the Property and Seven Million Dollars (\$7,000,000) in "new" (e.g. not Prior Expenditures incurred prior to the issuance of the building permit, other than expenditures incurred for terra cotta) hard construction costs (excluding such typical soft costs such as, without limitation, architectural and engineering costs or costs related to the demolition of the 222 North Michigan Building) relating to the construction of the Project, as certified by the City; otherwise, the Commissioner (on behalf of the City) may, either extend the above-mentioned fifteen (15) month period, or in the alternative, declare this Agreement null and void and be under no further obligation to Developer.

3.02 Scope Drawings and Plans and Specifications. The Developer shall deliver the Scope Drawings and Plans and Specifications to DPD and the Commission on Chicago Landmarks, ~~and DPD and the Commission on Chicago Landmarks.~~ After such initial review, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD and the Commission of Chicago Landmarks, as applicable, for review and approval. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan as amended from time to time and all applicable federal, state and local laws, ordinances and regulations, including, without limitation, the Landmarks Ordinance. The Developer shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

*Handwritten signature and initials*  
AM

3.03 Project Budget. The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Eighty One Million Two Hundred Thousand Dollars (\$81,200,000). The Developer hereby certifies to the City that (a) the City Funds, together with Lender Financing and Equity described in Section 4.02 hereof, shall be sufficient to complete the Project; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to Section 3.04 hereof.

3.04 Change Orders. Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by the Developer to DPD concurrently with

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the progress reports described in Section 3.07 hereof; provided, that any Change Order relating to any of the following must be submitted by the Developer to DPD for DPD's prior written approval: (a) a reduction in the square footage of the Facility; (b) a change in the use of the Property to a use other than a four-star full-service Hotel meeting the specifications attached to this Agreement as Exhibit N, with affiliated retail, restaurant and parking for the Term of this Agreement; (c) a new management entity for the Facility, which is not an Affiliate of Developer; (d) a delay in the completion of the Project which would extend the opening of the Facility by more than thirty (30) days beyond the Completion Date as defined in Section 3.01; or (e) Change Orders costing more than One Hundred Fifty Thousand Dollars (\$150,000) each, or an aggregate amount of Change Orders exceeding Five Hundred Thousand Dollars (\$500,000); provided, however, for purposes of aggregating Change Orders, the difference between additions and deletions in the Project shall be netted out and the foregoing shall not apply to any changes based upon interest rate changes or other soft costs provided that such costs increases have been otherwise funded by Developer or its financing sources. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DPD's written approval (to the extent required in this Section). The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer. Notwithstanding anything to the contrary in this Section 3.04, Change Orders costing less than One Hundred Fifty Thousand Dollars (\$150,000.00) each, to an aggregate amount of Five Hundred Thousand Dollars (\$500,000.00), do not require DPD's prior written approval as set forth in this Section 3.04, but DPD shall be notified in writing of all such Change Orders in Developer's written monthly progress reports pursuant to Section 3.07 and the Developer, in connection with such notice, shall identify to DPD the source of funding therefor.

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

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constitute approval of the quality, structural soundness or safety of the Property or the Project.

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

3.07 Progress Reports and Survey Updates. The Developer shall provide DPD with written monthly progress reports detailing the status of the Project, including a revised Completion Date, if necessary (with any change in Completion Date being considered a Change Order, requiring DPD's written approval pursuant to Section 3.04). The Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect. An independent architect (other than the Developer's architect) approved by DPD shall be selected from that certain list of four firms delivered by the City to Developer and hired, within thirty (30) days from the execution date of the Agreement, to act as the inspecting architect ("Inspecting Architect"), at the Developer's expense, for the Project. The Inspecting Architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DPD, prior to requests for disbursement for costs related to the Project.

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

3.10 Signs and Public Relations. Simultaneous with the commencement of the Project work until the City issues its Certificate, the Developer shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by

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the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Developer, the Property and the Project in the City's promotional literature and communications. All temporary and permanent signs shall be subject to the prior review and approval of the City's Department of Planning and Development, Landmark's Division. In such regard, the City acknowledges receipt of that certain letter from Jim Biggar, Sr. Director of Hard Rock Hotel and Resorts, to Mr. John McDonald of Mark IV Realty dated November 1, 2001 indicating that Hard Rock Hotel and Resorts specifically waives its requirement to include an exterior guitar sign on the Facility, that said letter was delivered by Mr. McDonald on behalf of Developer, and that Developer understands that the City shall rely on such letter in conjunction with its approval rights pursuant to this section, the Agreement, and the Landmarks Ordinance. The requirement for such approval set forth in this section shall run with the land.

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

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

## SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be Eighty One Million Two Hundred Thousand Dollars (\$81,200,000), to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to <u>Sections 4.06</u> )	\$27,200,000
Lender Financing	49,000,000
Estimated City Funds (subject to <u>Section 4.03</u> )	<u>5,000,000</u>
<b>ESTIMATED TOTAL</b>	<b>\$81,200,000</b>

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4.02 Developer Funds. Equity and/or Lender Financing shall be used to pay any Project costs, including but not limited to Redevelopment Project Costs and costs of TIF-Funded Improvements.

## 4.03 City Funds.

(a) Uses of City Funds. City Funds may be used to pay directly or reimburse the Developer only for costs of TIF-Funded Improvements. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein, contingent upon receipt by the City of evidence that: (i) Developer has incurred and paid construction costs in the amount of Seven Million Dollars (\$7,000,000) and Acquisition costs of at least Five Million Dollars (\$5,000,000) as the nature of those costs may be more particular particularly characterized and qualified in Section 3.01, (ii) receipt of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost, and (iii) evidence that Developer is in compliance with the MBE/WBE requirements, City residency obligations and prevailing wage requirements as described in Sections 8.09, 10.02 and 10.03. City Funds will not be disbursed until the City has received and approved a Requisition Form. The City acknowledges that, at the time City Funds are initially disbursed, the amount of such disbursement may exceed 6.16% of actual costs of the Project at that time. City Funds will not be disbursed prior to Lender Financing proceeds unless Developer provides evidence to the City that the prior disbursement of City Funds to the Developer is a requirement of Lender Financing. The City Funds are being provided hereunder to reimburse the Developer for a portion of its cost of Acquisition of the Property and certain costs of construction, but the parties acknowledge that once the City Funds are received by the Developer they will be used to finance other costs of the Project.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to reserve City funds from Bond Proceeds and Incremental Taxes in an amount not to exceed the lesser of \$5,000,000 or 6.16% of the actual total cost of the Project (the "City Funds"). In the event that the City Funds provided exceed 6.16% of the actual total Project cost, then, as a condition precedent to the issuance by the City of the Certificate, the Developer shall pay the excess back to the City within thirty (30) days of receipt of the City's written request. Instead of receiving a payment from the Developer, the

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City may, in its sole discretion, reduce the retainage to be returned to Developer (described in (d) below) by such excess amount.

(c) Conditional Grant of City Funds. The City Funds being provided hereunder are being provided on a conditional grant basis subject to the Developer's compliance with the terms of the Agreement. The Developer shall be obligated to return all or a portion of such funds to the City on the terms specified herein.

(d) Retainage. The initial disbursement of City Funds hereunder will be reduced by a fifteen percent (15%) retainage, in the amount of \$750,000 which will be held by the City and disbursed upon the issuance of the Certificate.

4.04 Construction Escrow. The City and the Developer hereby agree that the City and the Inspecting Architect shall be made a party to the Escrow Agreement, for the purpose of obtaining a copy of all documents delivered by the other parties thereto. The Escrow Agreement shall provide that the City shall receive copies of all notices, certifications and disbursements under the construction loan agreement between the Developer and its construction lender(s). In case of any conflict between the terms of this Agreement and the Escrow Agreement, the terms of this Agreement shall control.

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

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



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expenses of completing the TIF-Funded Improvements in excess of City Funds.

4.07 Requisition Form. On the Closing Date or at such time that Developer has incurred and paid construction costs in the amount of \$7,000,000 and Acquisition costs in the amount of at least \$5,000,000, Developer shall provide DPD with a Requisition Form, along with the documentation described therein.

## SECTION 5. CONDITIONS PRECEDENT

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

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

5.02 Scope Drawings and Plans and Specifications; Certain Subcontractors. The Developer shall submit to DPD, and DPD shall review and approve, the Scope Drawings, Plans and Specifications in accordance with the provisions of Section 3.02 hereof. The architect(s), restoration engineer and masonry subcontractor engaged by the Developer for the Project must be acceptable to the City.

5.03 Other Governmental Approvals. Consistent with the provisions of Section 3.01, the Developer shall have secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and shall submit evidence thereof to DPD, unless as otherwise provided for and agreed to by the parties in a "post-closing" letter of understanding ("Post-closing Letter").

5.04 Financing. The Developer shall have furnished proof reasonably acceptable to the City that the Developer has Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer shall have furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with the Equity set forth in Section 4.01) to complete the Project. Any liens against the Property in existence at the Closing Date shall be subordinated to certain encumbrances of the City set forth

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herein which run with the land pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County. The Subordination Agreement shall provide, among other things, that lenders providing Lender Financing and/or the purchaser of the tax credits shall be allowed to cure defaults under this Agreement as provided for in Section 15.03.

5.05 Acquisition and Title. On the Closing Date, the Developer shall furnish the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the City as a named insured with respect to the City's Junior Mortgage. The Title Policy shall be dated as of the Closing Date and shall contain only those title exceptions listed as Permitted Liens on Exhibit G hereto and shall evidence the recording of the Junior Mortgage and of this Agreement pursuant to the provisions of Section 8.18 hereof. The Title Policy shall also contain such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey. The Developer shall provide to DPD, prior to the Closing Date, documentation related to the purchase of the Property and certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. Not less than five (5) business days prior to the Closing Date, the Developer, at its own expense, shall have provided the City with current searches under the Developer's name (and the following trade names of, or to be used by, the Developer: Hard Rock Hotel, HRH Chicago, LLC (the intended operator/tenant of the Project, and Trust) as follows:

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

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showing no liens against the Developer, the Property 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, the Developer shall have furnished the City with three (3) copies of the Survey.

5.08 Insurance. The Developer, at its own expense, shall have insured the Property in accordance with Section 8.19(d) and Section 12 hereof. At least five (5) business days prior to the Closing Date, certificates required pursuant to Section 12 hereof evidencing the required coverages shall have been delivered to DPD.

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

5.10 Evidence of Prior Expenditures. Not less than twenty (20) business days prior to the Closing Date, the Developer shall have provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures in accordance with the provisions of Section 4.05(a) hereof.

5.11 Financial Statements. Not less than fifteen (15) days prior to the Closing Date, the Developer shall have provided to the DPD Financial Statements (or other satisfactory evidence acceptable to the DPD) for the 2000 and 2001 fiscal years, and audited or unaudited interim financial statements for the most recent three fiscal years.

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

5.13 Environmental. Not less than fifteen (15) days prior to the Closing Date, the Developer shall have provided DPD with copies of that certain phase I environmental audit completed with respect to the Property. Based on the City's review thereof, the City may,

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as a post-closing matter, in its sole discretion, require the initiation and/or completion of a phase II environmental audit with respect to the Property. The City further reserves the right to terminate this Agreement if, in the City's view, such audits reveal the existence of material environmental problems. Prior to the Closing Date, the Developer shall provide the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

5.14 Organization and Authority Documents. The Developer shall provide a copy of its Articles or Organization containing the original certification of the Secretary of State of Illinois; the Operating Agreement; certificates of good standing from the Secretary of State of Illinois and all other states in which the Developer is qualified to do business; a secretary's certificate regarding authorization, incumbency and other matters, in such form and substance as the Corporation Counsel may require; and such other documentation as the City may request.

With regard to St. George, the rights and responsibilities of its members are further described in that certain Operating Agreement dated October 25, 2001, and with regard to HRH, the rights and responsibilities of its members are further described in that certain Operating Agreement dated as October 25, 2001, certified copies of which are to be provided to the DPD. As of the execution date of this Agreement and as so provided for in the respective Operating Agreements, the ownership interest of St. George and HRH are as follows (a) with regard to St. George, its members are: Becker-HRHC (50.28% ownership interest), Hard Rock Café International (USA), Inc. (12.74% ownership interest), and Niki Development, LLC (36.98% ownership interest), and (b) with regard to HRH, its member are: Mark IV Realty, Inc. (its Managing Member, with an 11.54% ownership interest) and 230 N. Michigan LLC (88.48% ownership interest). The members of each Developer agree that the respective Operating Agreement shall not be modified or amended in any material manner without the express written consent of the DPD; provided, however, the City acknowledges that the percentage ownership of the members in the pertinent Developer as identified in this paragraph may change during the Term of the Agreement, and that such shall not constitute a "material change" to the pertinent Operating Agreement.

The City has also received a certified copy of the Trust Agreement, which lists St. George as the sole beneficiary of the Trust. Until the City issues its Certificate, St. George shall have no right to transfer any of the beneficial interest in said

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Trust without the express written consent of the City. In such regard, by even date herewith, the Trustee, St. George and the City have executed that certain Irrevocable Right to Approve Trust Documents in favor of the City.

5.15 Litigation. The Developer shall provide to Corporation Counsel and DPD, at least ten (10) business days prior to the Closing Date, a description of all pending or threatened litigation or administrative proceedings involving the Developer, HRH Chicago, LLC, the Trust, the Property or the Project, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

5.16 Preconditions of Disbursement. Prior to disbursement of City Funds hereunder, the Developer shall submit documentation of expenditures in the amount of \$7,000,000 for hard construction costs and Acquisition costs of at least \$5,000,000 (as may be more particularly characterized and qualified in Section 3.01) to DPD, which shall be satisfactory to DPD in its sole discretion. Delivery by the Developer to DPD of any request of disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

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

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

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

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

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

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ascertainable amount as to which the title insurer has insured over or liens for taxes or other work not yet due and payable and arising in the ordinary course of business;

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

(g) the Project is In Balance. The Project shall be deemed to be in balance ("In Balance") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "Available Project Funds" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, deposit with the City or the escrow agent, cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

Notwithstanding anything to the contrary contained herein, any documents described herein or action required that are not delivered to, or taken in satisfaction of the requirements of, the City in a timely manner prior to the Closing Date, to the extent agreed to by the City, shall be delivered to the City in a timely and expeditious manner as might be required by a Post-closing Letter, and the City shall not have been deemed to waive any rights to review or approve such documents.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct. In addition, the Developer shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the Bond Ordinance, if any, the Bonds, if any, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

5.17 City Junior Mortgage. In order to secure the Developer's compliance with its Payment Obligation, the Developer shall, on the



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Closing Date, execute a junior mortgage in the amount of \$5,000,000, which will be substantially in the form attached hereto as Exhibit O, in favor of the City (the "Junior Mortgage"), which Junior Mortgage shall be recorded against the Property in the Office of the Recorder of Deeds of Cook County at the Developer's expense.

5.18 Ground and Operating Leases; Management Agreement. The Developer shall provide to the City for its review and approval copies of any ground or operating leases or management agreements relating to the Property and Project, including the New 222 North Michigan Building and the 230 North Michigan Building.

5.19 Tax Credit Approvals. The Developer has provided to the City its receipt of Historic Tax Credit Part I Approval as evidenced by that certain letter from the National Park Service dated April 28, 1999. Developer further agrees to provide to the City evidence of receipt of Part II Approval from the National Park Service no later than one hundred fifty (150) days from the execution date of the Agreement.

5.20 Intercreditor Agreement. To the extent deemed necessary or advisable by DPD, the City and any entity providing Lender Financing shall enter into an agreement regarding the respective rights and obligations of the parties thereto regarding the Lender Financing and the Junior Mortgage, in form and substance satisfactory to the City and consistent with the terms and provisions of this Agreement. Such agreement may, in DPD'S discretion, contain provisions regarding the extent to which the lien under the Junior Mortgage shall be subordinate to any lien under such Lender Financing, it being understood by the parties hereto that the City's subordination shall be limited to the extent set forth in Section 16 (c) of this Agreement. Any such agreement shall set forth the relative rights of the parties thereto with respect to the priority of their liens and their rights to pursue remedies.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors. (a) Except as set forth in Section 6.01(b) below or as otherwise approved by DPD, prior to entering into an agreement with a General Contractor or any subcontractor for construction of the Project, the Developer shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with, and having an office located in, the City of Chicago, and shall submit all bids received

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

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

6.02 Construction Contract. No later than April 1, 2002, Developer shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with Section 6.01 above, for DPD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. In the event the Developer submits evidence to DPD showing sufficient justification for the Developer not to solicit bids pursuant to Section 6.01 (a), such failure will not result in DPD'S withholding approval of the Construction Contract. Within ten (10) business days after execution of such

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contract by the Developer, the General Contractor and any other parties thereto, the Developer shall deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

6.03 Performance and Payment Bonds. Except as otherwise agreed by the City, prior to commencement of the Project the General Contractor shall be bonded for its performance and payment by sureties having an AA rating or better using American Institute of Architect's Form No. A311 or its equivalent. The City shall be named as obligee or co-obligee on such bond. Prior to the commencement of any portion of the Project which includes work in the public way, the Developer shall require that the General Contractor or any subcontractor performing such work be bonded for its performance and payment by sureties having an AA rating or better using a form acceptable to the City. The City shall be named as obligee or co-obligee on such bond.

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

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

## SECTION 7. COMPLETION

7.01 Certificate of Completion. Upon completion of the Project in accordance with the terms of this Agreement, and, subject to the requirements of Section 4.03(b) and 8.25, upon the Developer's written request, DPD shall issue to the Developer a Certificate of Completion ("Certificate") in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to the Developer's written request for a Certificate within thirty (30) days by issuing either a Certificate or a written statement

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detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures. The City shall have the right to reduce the retainage amount due to the Developer in an amount equal to the overpayment of the TIF-Funded Improvements.

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

Those covenants specifically described at Sections 3.10, 8.01(j), (m) and (n), 8.02, 8.06 (a) and (b) and 8.23 as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to Section 18.15 of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

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

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

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of

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City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, the Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds;

(c) the right to pursue remedies under the Junior Mortgage; and

(d) the right to seek reimbursement of the City Funds from the Developer, and to keep all or any portion of the retainage referred to in Section 4.03(d).

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

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

8.01 General. Each of Developer (St. George and HRH) represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

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

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

(c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary action, and does not and will not violate its Articles of Organization and the Operating Agreement, as amended and supplemented, any applicable provision of law, or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

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(d) unless otherwise permitted pursuant to the terms of this Agreement, the Developer shall have acquired and shall maintain good, indefeasible and merchantable fee simple title to the Property free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and Non-Governmental charges that the Developer is contesting in good faith pursuant to Section 8.15 hereof);

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

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

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

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

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

(j) until a Certificate is issued for the Project, the Developer shall not do any of the following without the prior written consent of DPD, which consent shall not be unreasonably withheld: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease (other than the Lease) or otherwise dispose of all or substantially all of its



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assets (including but not limited to any fixtures or equipment now or hereafter attached thereto); (3) enter into any transaction outside the ordinary course of the Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget. After the issuance of a Certificate and for the Term of the Agreement, the Developer will not, without obtaining the prior written consent of the City, obtain refinancing for the Project or financing for its operations on the Property in a principal amount exceeding 93% of loan-to-value as determined by an appraisal conducted on behalf of the Developer's lenders;

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

(m) during the Term of the Agreement and after a Certificate is issued, except with the prior written consent of the City, the Developer shall not sell, lease or transfer all or any portion of the Property to another entity whether by merger, consolidation or otherwise; provided, however, the City agrees to not unreasonably withhold its consent to transfer of the Property to another entity which meets the following criteria: (i) such entity is a nationally recognized operator of first-class hotels and substantially meets or exceeds the specifications for the Hotel which are attached hereto as Exhibit N; (ii) such entity is owned or controlled by institutional or public investor(s) who (A) agree(s) to assume all of the obligations of the Developer under this Agreement and (B) has/have a net equity investment in the Project in excess of \$25 million, and (iii) such transfer would not, by reason of such ownership, materially adversely affect the economic benefits of the Project or the physical appearance of the Facility as contemplated

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by this Agreement. In the event of a sale, lease or transfer without the City's consent as required in this Agreement, the Developer shall be obligated to reimburse the City for an amount equal to the amount of the City Funds paid to the Developer under this Agreement (the "Reimbursement Amount") and, in addition to any remedies otherwise available to the City under this Agreement, the City shall also have the right to draw on the Compliance Letter of Credit for the full Reimbursement Amount and to foreclose the Junior Mortgage;

(n) during the Term of the Agreement, the Developer shall not, without the prior written consent of the City, permit a change in the use of the Property to a use other than a four-star full-service Hotel meeting the specifications attached hereto as Exhibit N, with affiliated retail, restaurant and parking for the Term of this Agreement; and

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

The provisions set forth in Section 8.01 (j), (m) and (n) above shall run with the land and shall be binding upon transferees during the period set forth in such provisions.

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in Sections 3.02 and 3.03 hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the Standards for Historic Rehabilitation, the TIF Ordinances, the Bond Ordinance, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer. If the Developer fails to redevelop the Property in accordance with this Agreement, then the Developer shall pay to the City all City Funds paid to the Developer hereunder, and the City shall have the right to enforce the Junior Mortgage, keep the retainage provided hereunder, draw on the Compliance Letter of Credit (if issued) or pursue any other remedies available to it hereunder. The covenants set forth in this Section shall run with the land and be binding upon any transferee.

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

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

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

8.06 Job Creation and Retention: Covenant to Remain in the City; Continuing Operations.

(a) Not less than two hundred eighty-five (285) full-time equivalent, permanent jobs shall be created or retained by the Developer within six(6) months of completion of the Project, at the Facility through the Term of the Agreement. Of these jobs, two hundred twenty seven (227) will be in the hotel portion of the operations, nine (9) will be in the retail portion of the operations, and forty-nine (49) will be in the restaurant portion of the operations.

(b) The Developer hereby covenants and agrees to maintain its operations within the City of Chicago at the Property through the Term of the Agreement.

(c) The Developer shall make all commercially reasonable efforts to maintain an occupancy level ("Occupancy Level") and operation level, as measured by the number of days in operation ("Operation Level"), as follows: (a) 70% Occupancy Level of the hotel rooms, and 70% Occupancy Level and Operation Level of the

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retail space in the Facility, during any calendar year, with the Operation Level of the retail space being measured on an aggregate basis; and (b) 75% Operation Level of the restaurant space in any calendar year. If, at any time after the one-year anniversary of the completion of the Project, the Occupancy Level of the Facility falls below 55% for one consecutive year, and such failure is not due to general market conditions or other local conditions affecting the hotel and restaurant industries in the area of the Project, and such failure continues for twelve (12) months after written notice from the City, then the Developer shall pay to the City all City Funds paid to the Developer hereunder, and the City shall have the right to terminate this Agreement. If the Developer does not meet its Payment Obligation, then the City shall have the right to enforce the Junior Mortgage, draw on the Compliance Letter of Credit or pursue any other remedies available to it hereunder. The City agrees to not unreasonably withhold its consent to the Developer's plan to restore Occupancy Levels, subject to the use restrictions set forth in Section 8.01(m) hereof.

(d) The covenants set forth in subsections (a) and (b) of this Section 8.06 shall run with the land and be binding upon any transferee.

(e) The City acknowledges that the Hotel shall be operated at the Facility by Tenant pursuant to the terms and conditions of the Lease. As such, in fulfillment of the covenants described in this Section 8.06, the City has received from Tenant that certain Tenant Certification, Estoppel, Inducement and Subordination ("Tenant Certificate") dated October 25, 2001. Notwithstanding anything to the contrary contained herein, the fulfillment of any obligations by Tenant under the Tenant Certificate shall in no manner relieve Developer of its obligations under this Section 8.06.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.18 Recording and Filing. The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto, to be recorded and filed on the date hereof in the conveyance and real property records of the county in which the Project is located. This Agreement shall be recorded prior to any mortgage made in connection with Lender Financing. In the event that any such mortgage is recorded prior to this Agreement, the Developer and any lenders shall comply with the provisions of Section 5.04. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

8.19 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project, or become due and payable, and which create, may create, or appear to create a

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lien upon the Developer or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to the Developer, the Property or the Project including but not limited to real estate taxes.

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

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

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

(b) Developer's Failure To Pay Or Discharge Lien. If the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise DPD thereof in writing, at which time DPD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in DPD's sole discretion, make such

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payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPD by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

8.20 Preservation Easement. If, at any time from the execution date of the Agreement until the expiration of the Term of the Agreement, Developer, or its successors and assigns, in its sole and absolute discretion, seeks to create and donate a preservation easement to any entity affecting the Facility, the terms of such preservation easement shall be reviewed and approved by the DPD prior to the execution of such preservation easement.

8.21 Public Benefits Program. The Developer shall, within six months after the date the Certificate is issued, undertake a Public Benefits Program as described on Exhibit M, which shall be conducted at least once during each school year throughout the Term of the Agreement. Annually, upon completion of the Public Benefits Program, the Developer shall provide the City with a status report describing in sufficient detail the Developer's compliance with the Public Benefits Program.

8.22 Selection of Retail Tenants. The Developer agrees to use all reasonable efforts to contact and select prospective retail tenants from the City's list of preferred vendors, which shall include both chain and independent retailers. However, the selection of any and all retail and restaurant tenants (including the champagne/bar lounge, as applicable) shall be subject to DPD's approval, which shall not be unreasonably delayed or withheld. DPD shall designate the contact person to whom all retail and restaurant tenant approval requests shall be made. Such requests shall be submitted to DPD in writing and in an in-person presentation. Developer agrees to fully inform DPD on the prospective tenant(s), Developer's selection process and to provide additional information deemed necessary by DPD in such approval process. After such presentation, DPD shall respond to requests within 15 business days.



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8.23 Operating Reserve; Insurance. While the 230 North Michigan Building remains standing, the Developer and any successors in title shall at all times (i) maintain insurance in the full replacement value on the terra cotta facade and ornamentation and an adequate operating reserve fund for the express purpose of maintaining the terra cotta facade and ornamentation on the 230 North Michigan Building, and (ii) preserve intact and in good condition and in compliance with all applicable historic preservation requirements and guidelines, the significant architectural features identified as part of the City of Chicago landmark designation (referred to in the recitals herein) of the 230 North Michigan Building. The covenants set forth in this Section shall run with the land and be binding upon any transferee for the time period set forth above.

8.24 Participation in Job Readiness Program. The Developer and its tenants shall work with the Mayor's Office of Workforce Development in order to participate in job training programs that provide job applicants for the retail, restaurant and hotel employment opportunities created by the Project. The Developer shall include provisions in its leases and agreements with Developer's tenants which require tenants to comply with the requirements set forth in this section.

8.25 Compliance Letter of Credit. The Developer shall provide the Compliance Letter of Credit, in the amount of Five Hundred Thousand Dollars (\$500,000), to the City at the time that a Certificate has been issued. The Compliance Letter of Credit shall be an irrevocable, standby letter of credit issued by a financial institution and in a form acceptable to the City, naming the City as sole beneficiary, providing by its terms for payment to the City upon the submission of a sight draft accompanied by a certificate issued by the City stating that the City is entitled to draw upon such letter of credit under the terms of this Agreement. The Compliance Letter of Credit may have a one-year term which must be renewed for at least one year at least thirty (30) days in advance of its then expiry date unless automatically renewed by its terms for such period by the issuing institution (a so-called "evergreen provision") unless the issuer notifies the City at least 60 days prior to the expiration of the issuer's intent not to renew the Compliance Letter of Credit. Unless the Compliance Letter of Credit is renewed at least thirty (30) days prior to its expiration date, or if the issuer of the Compliance Letter of Credit containing an "evergreen provision" for automatic renewal gives timely notice not to renew the same and no replacement Compliance Letter of Credit is provided to the City at least thirty (30) days

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prior the expiration date, then the City shall be permitted to draw on the Compliance Letter of Credit in its full amount. The Compliance Letter of Credit must remain in effect for the Term of the Agreement. The City may draw on the Compliance Letter of Credit if the Developer fails to comply with Sections 8.01(m) and (n), 8.06 and 8.23 or if an Event of Default has occurred.

8.26 Approval of Certain Subcontractors. The Developer shall not, without the prior written consent of the City, change the architect(s), restoration engineer and masonry subcontractors hired to work on the Project which have previously been approved by the City.

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

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

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

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

## SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

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other party's provision of services in connection with the construction of the Project or occupation of the Property:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The willful falsification of statements and the certification of payroll data may subject the Developer, the General Contractor and/or the subcontractors to prosecution.

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



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

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

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

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

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

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

c. Consistent with Section 2-92-440, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which

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constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 10.03. The Developer or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in its activities and operations other than the Project.

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

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

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

g. Prior to the commencement of the Project or execution of this Agreement, whichever occurs first, the Developer, the General Contractor and all major subcontractors shall be required to meet with the monitoring staff of DPD with regard to the Developer's compliance with its obligations under this Section 10.03. During this meeting, the Developer shall demonstrate to DPD its plan to

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achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by DPD. During the Project, the Developer shall submit the documentation required by this Section 10.03 to the monitoring staff of DPD. Such documentation may include the following: 1) sub-contractor's activity report, 2) contractor's certification concerning labor standards and prevailing wage requirements, 3) contractor letter of understanding, 4) monthly utilization report, 5) authorization for payroll agent, 6) certified payroll, 7) evidence that MBE/WBE contractor associations have been informed of the Project, by written notice and meetings, and 8) evidence of compliance with the job creation / retention requirements set forth in this Agreement. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that the Developer is not complying with its obligations hereunder shall, upon the delivery of written notice to the Developer, be deemed an Event of Default hereunder. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to the Developer to halt the Project, (2) withhold any further payment of any City Funds to the Developer or the General Contractor, or (3) seek any other remedies against the Developer available at law or in equity.

## SECTION 11. ENVIRONMENTAL MATTERS

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

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

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(B) any other real property in which the Developer, or any person directly or indirectly controlling, controlled by or under common control with the Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Developer), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer or any of its Affiliates under any Environmental Laws relating to the Property.

## SECTION 12. INSURANCE

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

(a) Prior to Execution and Delivery of this Agreement

(i) Workers Compensation and Employers Liability Insurance

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

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

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

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(b) Construction

(i) Workers Compensation and Employers Liability Insurance

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

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

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

(iii) Automobile Liability Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

When any work is to be done adjacent to or on railroad or transit property, Contractor shall

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

(v) Builders Risk Insurance

When the Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable. The City of Chicago shall be named as an additional insured and loss payee. The parties understand and agree that evidence of Builder's Risk Insurance (as described herein) shall be provided by Developer to the City no later than November 15, 2001. Included in such insurance coverage shall be a special certificate governing the care of the terra cotta on the exterior of the Facility.

(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

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

(c) Other Insurance Requirements

(i) All Risk Property Insurance

Prior to execution and delivery of this Agreement and during construction of the Project the Developer shall maintain All Risk Property Insurance, in the amount of the full replacement value of the Property.

(ii) All Risk Property Insurance

Post-construction, throughout the Term of the Agreement and continuing for the life of the 230 North Michigan Building, the Developer shall maintain All-Risk Property Insurance, including improvements and betterments, in the full replacement value of the Property, which shall include replacement of the terra cotta facade. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable

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## (d) Other Requirements

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

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

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

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

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

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

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

The Developer shall require the 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 shall be subject to the same requirements (Section C) of Developer unless otherwise specified herein.

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

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

## SECTION 13 INDEMNIFICATION

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

## SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. The Developer shall keep and maintain separate, complete, accurate and detailed books and

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

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

## SECTION 15. DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

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

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

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not

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dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor).

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

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, suspend disbursement of City Funds, withhold all or a portion of the retainage, enforce the Junior Mortgage or draw on the Compliance Letter of Credit. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. then the City shall have the right to terminate the Agreement.

15.03 Curative Period. In the Event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer shall have failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the Event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer shall have failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured; provided, further, that no cure period shall be available for a failure to comply with Section 8.06(c).



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## SECTION 16. MORTGAGING OF THE PROJECT

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

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

(b) In the Event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "the Developer" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer's interest under this Agreement, such party shall have no liability under this

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Agreement for any Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, in which case the Developer shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Prior to the issuance by the City to the Developer of a Certificate pursuant to Section 7 hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD; provided, that the City shall agree that the lien of the City under the Junior Mortgage shall only be subordinate to the lien under a New Mortgage if it relates to financing obtained by the Developer (i) which is intended to replace the Lender Financing and (ii) the principal amount of which does not exceed the original principal amount of Lender Financing and the amount of Equity contributed by the Developer. The execution of New Mortgages after the issuance of a Certificate shall be subject to the provisions of Section 8.01(k) hereof.

## SECTION 17. NOTICE

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

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

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

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If to Developer: St. George Hotel L.L.C.  
c/o Mark IV Realty Group, Inc.  
68 East Wacker Place, 10<sup>th</sup> floor  
Chicago, Illinois 60601

HRH (Chicago) Development LLC  
c/o Mark IV Realty Group, Inc.  
68 East Wacker Place, 10<sup>th</sup> floor  
Chicago, Illinois 60601

With Copies To: Elias N. Matsakis  
McBride Baker & Coles  
500 West Madison, 40<sup>th</sup> Floor  
Chicago, Illinois 60661

and: Becker Ventures, LLC  
250 Stephenson Highway - Suite 300  
Troy, Michigan 48083  
Attn: Michael McInerney

and: Clark Hill, PLC  
500 Woodward Avenue - 35<sup>th</sup> floor  
Detroit, Michigan 48226  
Attn: Timothy Koltun

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

## SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement Exhibit D hereto without the consent of any party hereto.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by

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reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

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

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

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

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

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

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

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

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

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

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

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

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

18.15 Assignment. Prior to the issuance by the City to the Developer of a Certificate, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City; provided, that no consent will be needed for an assignment to any entity under the common control of the Developer and whose owners have been identified as part of the tax credit equity investors or other parties having provided the balance of the funding commitments. Notwithstanding the issuance of such Certificates, any successor in interest to the Developer under this Agreement shall certify in writing to the City its Agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.19 (Real Estate Provisions) or 8.27 (Survival of Covenants) hereof, for the Term of the Agreement. The Developer

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consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

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

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

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

18.20 No Business Relationship with City Elected Officials. Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago,

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

18.21 Trustee's Execution of Agreement. This Agreement is executed by the Firststar Bank, N.A. not personally but as Trustee under Trust No. 7504 as aforesaid, in the exercise of power and authority conferred on and vested in said Trustee as such, and it is expressly understood and agreed that nothing in said document contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing thereunder, or to perform any promises, agreements or covenants or to honor any warranties or representations, either express or implied, including but not limited to warranties (including but not limited to warranties of title, physical condition, environmental condition, merchantability, and fitness for a particular purpose), indemnifications (including, but not limited to indemnifications for injury to persons or property, for environmental liability, and for liability or damages resulting from or relating to claims or matters of any nature whatsoever), and hold harmless representations in said instrument (all such liability, if any, being expressly waived by the parties hereto and their respective successors and assigns) and that so far as said Trustee is concerned, the owner or any indebtedness or right accruing under such document shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said Trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting any factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said Trust. In the event of conflict between the terms of this paragraph and of this Agreement,



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on any questions of apparent liability or obligation resting upon said trustee, the provisions of this Section 18.21 shall be controlling.

18.22 Covenants Running with the Land. Notwithstanding anything to the contrary contained in the Agreement, the parties agree that those covenants that are deemed to run with the land, as described in Section 7.02 above, shall expire upon the expiration of the Term of the Agreement.

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

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

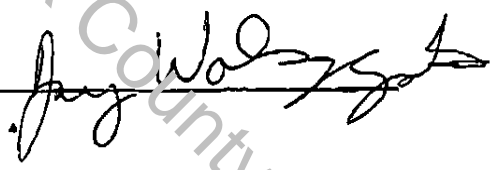
DEVELOPER:

ST. GEORGE HOTEL L.L.C., an Illinois limited liability company

By: BECKER-HRHC, LLC,  
a Michigan limited liability company

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

By: Hard Rock Café International (USA), Inc.,  
a Florida corporation

By: 

By: NIKI DEVELOPMENT, LLC,  
an Illinois limited liability company

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

HRH (CHICAGO) DEVELOPMENT LLC,  
an Illinois limited liability company

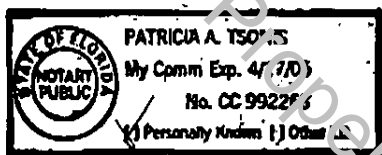
By: MARK IV REALTY, INC.,  
an Illinois corporation,  
Its Managing Member

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

# UNOFFICIAL COPY

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 9th day of November, 2001, by Jay Wolszczak, the Vice President and Secretary of **HARD ROCK CAFE INTERNATIONAL (USA), INC.**, a Florida corporation, on behalf of the corporation. He is personally known to me.



Patricia A. Tsonis  
Signature of Notary

PATRICIA A. TSONIS  
Name of Notary (typed or printed)

Commission Number (if not legible on seal): CC 992268

My Commission Expires (if not legible on seal): 4/17/2005

Property of Cook County Clerk's Office

11080158

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

DEVELOPER:

ST. GEORGE HOTEL L.L.C., an Illinois limited liability company

By: BECKER HRHC, LLC,  
a Michigan limited liability company

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

By: Hard Rock Café International (USA), Inc.,  
a Florida corporation

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

By: NIKI DEVELOPMENT, LLC,  
an Illinois limited liability company

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

HRH (CHICAGO) DEVELOPMENT LLC,  
an Illinois limited liability company

By: MARK IV REALTY, INC.,  
an Illinois corporation,  
Its Managing Member

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

11080158

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

DEVELOPER:

ST. GEORGE HOTEL L.L.C., an Illinois limited liability company

By: BECKER-HRHC, LLC,  
a Michigan limited liability company

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

By: Hard Rock Café International (USA), Inc.,  
a Florida corporation

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

By: NIKI DEVELOPMENT, LLC,  
an Illinois limited liability company

By: John Macher

HRH (CHICAGO) DEVELOPMENT LLC,  
an Illinois limited liability company

By: MARK IV REALTY, INC.,  
an Illinois corporation,  
Its Managing Member

By: John Macher

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TRUST:

FIRSTAR BANK, N.A., not personally but solely  
but solely as Trustee under Trust #7504

By:

Angela McClain  
Land Trust Officer

A Hest: Norma J. Haworth  
Land Trust Officer

CITY OF CHICAGO,  
an Illinois municipal corporation

By:

Alicia Mazur Berg  
Commissioner of Planning and Development

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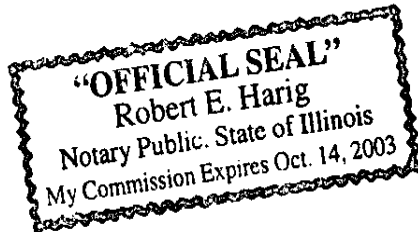
Property of Cook County Clerk's Office

Illinois )  
County of Cook )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, Do Hereby Certify That Angela McClain, personally known to me to the Land Trust Officer of Firststar Bank, N.A and Norma J. Haworth, personally known to me to the Land Trust Officer of said National Banking Association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Land Trust Officer and Land Trust Officer of said Association, and caused the Corporate Seal of said Association to be affixed thereto, pursuant to authority, given by the Board of Directors of said Association as their free and voluntary act of said Association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this <sup>9<sup>th</sup></sup> day of November, 2001

Robert E. Harig  
Notary Public



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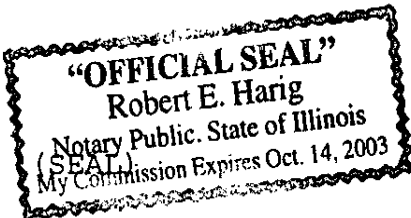
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STATE OF ILLINOIS     )  
                                  )    SS  
COUNTY OF COOK        )

I, Robert E. Harig, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jan Marks and \_\_\_\_\_, personally known to me to be the (PRESIDENT) and \_\_\_\_\_ of Mark II Leok, Inc., an Illinois limited liability company (the "Developer"), and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to them by the [Board of Directors] of the Developer, as his/her free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 9<sup>th</sup> day of NOVEMBER, 2001.

Robert E. Harig  
Notary Public



My Commission Expires 10/14/03

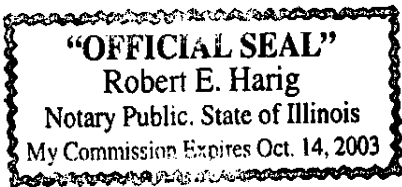


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STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, ROBERT E. HARIG, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN MARKS and \_\_\_\_\_, personally known to me to be the MGE and \_\_\_\_\_ of NIKI DEV. LLC, an ILL LLC (the "COMPANY"), and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument pursuant to the authority given to them by the [Company Op Agent] of the COMPANY, as his/her free and voluntary act and as the free and voluntary act of the COMPANY for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 9<sup>th</sup> day of NOVEMBER, 2001.



Robert E. Harig  
Notary Public

My Commission Expires 10/14/03

(SEAL)

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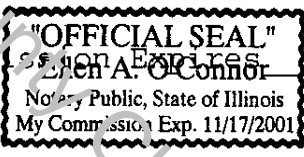
# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  )    SS  
COUNTY OF COOK        )

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

GIVEN under my hand and official seal this 25<sup>th</sup> day of ~~November~~, 2001.  
October

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

My Comm. 

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## EXHIBIT A REDEVELOPMENT PROJECT AREA LEGAL DESCRIPTION

### *Legal Description Of North Loop Area.*

#### Redevelopment Project Area Legal Description.

A tract of land consisting of lots and blocks or parts thereof and streets and alleys of Blocks 16, 17, 35, 36, 37 and 58 in the Original Town of Chicago in the east part of the southeast quarter of Section 9, Township 39 North, Range 14 and part of Blocks 8 and 9 in the Fort Dearborn Addition to Chicago in the southwest fractional quarter of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in the City of Chicago, County of Cook, State of Illinois and bounded as follows:

beginning at the intersection of the south line of West Lake Street and the west line of North LaSalle Street; thence north along the west line of North LaSalle Street to the north line extended west of West Haddock Place; thence east along said line to the west line of North Clark Street; thence north along said west line to the northerly line of West Wacker Drive as said northerly line was established by ordinance passed by the City Council of the City of Chicago on December 15, 1919; thence east along said northerly line of West Wacker Drive to the east line of North State Street; thence south along said east line to the north line of Haddock Place; thence east along said line to the east line of Lot 28 extended north of Block 8 in Fort Dearborn Addition to Chicago as aforesaid; thence south along the east line of Lot 28 as aforesaid to the north line of East Lake Street; thence east along said north line to the east line of Lot 10 extended north of Block 9 in Fort Dearborn Addition to Chicago as aforesaid; thence south along the east line of Lot 10 as aforesaid to the north line of East Benton Place; thence east along said north line to the south line of East Wabash Avenue; thence south along said line to the east line of North State Street; thence south along said east line to the south line extended east of Lot 1 of Assessor's Re-subdivision of Lots 1 to 5 in Block 58 in Assessor's Division of the Original Town of Chicago as aforesaid; thence west along said extended line to the west line of said Lot 1; thence north along said line to the south line of West Washington Street; thence west along south line to the west line of North Dearborn Street; thence north along said west line to the south line of West Randolph Street; thence west along said south line to the west line of North Clark Street; thence north along said west line to the south line of West Lake Street; thence west along said south line to the place of beginning.

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## *Legal Description Of Added Area.*

The boundaries of the Added Project Area are legally described as follows:

### Subarea 1.

A tract of land comprised of all or parts of Blocks 19, 20, 31, 32, 33, and 41 in the Original Town of Chicago, together with parts of streets and alleys adjoining said blocks, in the south half of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, which tract more particularly described as follows:

beginning at the intersection of the west line of North LaSalle Street as widened with the north line of Block 33; thence west along said north line (being also the south line of West Lake Street) to the west line of said block; thence south along said west line (being also the east line of North Wells Street) to the north line of West Couch Place; thence east along said north line to an intersection with the northward extension of the west line of Lot 7 in Block 33; thence south along said extension, and along said west line, to the south line of said block; thence east along said south line (being also the north line of West Randolph Street) and along the eastward extension of said south line, to an intersection with the northward extension of the west line of Block 39 in the Original Town of Chicago; thence south along said extension, and along said west line (being also the east line of North LaSalle Street) to an intersection with the eastward extension of the south line of West Court Place; thence west along said extension and along said south line to the west line of Block 40 aforesaid; thence west, crossing North Wells Street, to the northeast corner of Lot 8 in Block 41 aforesaid; thence west along the north line of said lot to an intersection with the southward extension of the west line of Lot 1 in said block; thence north along said extension and along said west line to the north line of Block 41; thence west along said north line (being also the south line of West Randolph Street) to the northwest corner of said block; thence west, crossing North Franklin Street, to the northeast corner of Block 42 in the Original Town of Chicago; thence west along the north line of said Block 1 (being also the south line of West Randolph Street) to an intersection with the southward extension of the west line of the east 20 feet of Lot 7 in Block 3 aforesaid; thence north along said extension and along said west line to the north line of West Couch Place; thence east along said north line to the east line of Block 31; thence north along said east line (being also the west line of North Franklin Street) and along the

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