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**35th/HALSTED
 REDEVELOPMENT PROJECT AREA**

**ACRE DEVELOPMENT, LLC
 REDEVELOPMENT AGREEMENT**

DATED AS OF JUNE 29, 2004

BY AND BETWEEN

THE CITY OF CHICAGO

AND

**ACRE DEVELOPMENT, LLC,
 an Illinois limited liability company**

M.G.R. TITLE

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

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ACRE DEVELOPMENT, LLC REDEVELOPMENT AGREEMENT LIST OF SCHEDULES AND EXHIBITS

Schedules

Schedule A	Definitions
Schedule B	Insurance Requirements

Exhibits

Exhibit A	*Redevelopment Area Legal Description
Exhibit B-1	*Legal Description of the Property
Exhibit B-2	Site Plan for the Project
Exhibit B-3	Affordable Housing Ordinance
Exhibit B-4	Affordable Sales Prices
Exhibit B-5	*Schedule of Prohibited Uses/Approved Tenants for the Property
Exhibit C	Redevelopment Plan
Exhibit D-1	*Project Budget
Exhibit D-2	*Construction (MBE/WBE) Budget
Exhibit E	*TIF-Funded Improvements
Exhibit F	Construction Contract
Exhibit G	Approved Prior Expenditures
Exhibit H	Permitted Liens
Exhibit I	Opinion of Developer's Counsel
Exhibit J	*Preliminary TIF Projection - Real Estate Taxes
Exhibit K	Form of Payment and Performance Bond
Exhibit L	Public Benefits Program
Exhibit M	Form of Note and related Certificate of Expenditure
Exhibit N	Form of City Recapture Mortgage

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

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[leave blank 3" x 5" space for recorder's office]

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

**ACRE DEVELOPMENT, LLC
REDEVELOPMENT AGREEMENT**

This Acre Development, LLC Redevelopment Agreement (the "**Agreement**") is made as of this 29th day of June, 2004, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and Acre Development, LLC, an Illinois limited liability company ("**Developer**").

RECITALS:

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

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (2002 State Bar Edition), as amended from time-to-time (the "**Act**"), to finance projects that eradicate blighted conditions through the use of tax increment allocation financing for redevelopment projects.

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C. City Council Authority: To induce redevelopment under the provisions of the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on January 14, 1997: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the 35th/Halsted Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the 35th/Halsted Redevelopment Project Area as a Redevelopment Project Area Pursuant to Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the 35th/Halsted Redevelopment Project Area" (the "**TIF Adoption Ordinance**"). Collectively the three ordinances are defined as the "**TIF Ordinances**". The redevelopment project area (the "**Redevelopment Area**") is legally described in Exhibit A.

D. The Project: Developer plans to acquire the 12 parcels of City-owned vacant land located at 3434-64 S. Halsted Street, Chicago, Illinois 60609 (the "**Property**"). The Property is located at the northwest corner of the intersection of Halsted Street and 35th Street. A legal description of the Property is stated in Exhibit B-1. Developer plans to construct a 5-story, mixed-use, retail and residential condominium development on the Property. The residential part of the development will have approximately 67 one and two bedroom condominium units, of which 14 will be sold at affordable housing prices. All residential units will have internal balconies, and some second floor units will have balconies that will extend onto the rooftop. Also, upgrade options will be offered to residential unit purchasers for improvements to base sale plans. In addition, an underground parking garage will be constructed that will have at least 67 private parking spaces available for purchase. The retail part of the development will include approximately 17,655 square feet of retail space, ranging from approximately 1,750 square feet to 6,000 square feet and will accommodate up to 7 tenants. Thirty-four on-site parking spaces will be provided to support the retail component. Acquisition of the Property and construction of the retail and residential condominium developments and related work are collectively defined as the "**Project**". A site plan for the Project is Exhibit B-2. The completion of the Project would not reasonably be anticipated to occur without the financing contemplated in this Agreement.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago 35th/Halsted Redevelopment Project Area Tax Increment Finance Program Redevelopment Plan and Project dated July 9, 1996 (the "**Redevelopment Plan**") attached as Exhibit C, as amended from time-to-time.

F. City Financing and Assistance: Subject to the terms and conditions of this Agreement, the City will issue the Note to Developer in the amount stated in Section 4.03. The City will make payments of principal and interest on the Note to reimburse Developer out of Available Incremental Taxes for the cost of TIF-Funded Improvements. In addition, the City may, in its discretion, issue tax increment allocation bonds ("**TIF Bonds**") secured by Incremental Taxes (as defined below) as provided in a TIF bond ordinance (the "**TIF Bond Ordinance**"), at a later date as described and conditioned in Section 4.08. The proceeds of the TIF Bonds (the "**TIF Bond Proceeds**") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Available Incremental Taxes, including any such

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payment made under the Note provided to Developer under this Agreement, or in order to reimburse the City for the costs of TIF-Funded Improvements.

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

AGREEMENT:

ARTICLE ONE: INCORPORATION OF RECITALS

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

ARTICLE TWO: DEFINITIONS

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

ARTICLE THREE: THE PROJECT

3.01 **The Project**. Developer will: (i) begin redevelopment construction no later than July 15, 2004, and (ii) complete redevelopment construction no later than March 31, 2006, subject to the provisions of Section 18.17 (Force Majeure).

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

3.03 **Project Budget**. Developer has furnished to DPD, and DPD has approved, a Project Budget which is Exhibit D-1, showing total costs for the Project in an amount not less than \$21,546,249. Developer hereby certifies to the City that: (a) it has Lender Financing and/or

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Equity in an aggregate amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. Developer will promptly deliver to DPD copies of any Change Orders with respect to the Project Budget as provided in Section 3.04.

3.04 Change Orders.

(a) Except as provided in subparagraph (b) below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by Developer to DPD concurrently with the progress reports described in Section 3.07; provided, however, that any Change Orders relating to any of the following must be submitted by Developer to DPD for DPD's prior written approval: (i) a reduction by more than five percent (5%) in the square footage of the Project, or (ii) a change in the basic use of the Property and improvements, (iii) an increase in the Project budget by more than 10% or (iv) a delay in the Project completion date of more than 120 days. DPD will respond to Developer's request for written approval within 30 days from receipt of such request by granting or denying such request or by requesting additional information from Developer. If DPD does not respond to Developer's request, and if Developer has complied with the requirements for notice stated in Section 17.02, then Developer's request will be deemed to have been approved by DPD. Developer will not authorize or permit the performance of any work relating to any Change Order requiring DPD's prior written approval or the furnishing of materials in connection therewith prior to the receipt by Developer of DPD's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, will contain a provision to this effect. An approved Change Order will not be deemed to imply an obligation on the part of the City to increase the amount of City Funds or to provide any other additional assistance to Developer.

(b) Notwithstanding anything to the contrary in this Section 3.04, Change Orders costing less than Two Hundred Fifty Thousand Dollars (\$250,000) each, to an aggregate amount of Two Million Dollars (\$2,000,000), do not require DPD's prior written approval as stated in this Section 3.04, but DPD must be notified in writing of all such Change Orders and Developer, in connection with such notice, must identify to DPD the source of funding therefor in the progress reports described in Section 3.07.

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

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

3.07 **Progress Reports and Survey Updates.** After the Closing Date, on or before the 15th day of each reporting month, Developer will provide DPD with written quarterly construction progress reports detailing the status of the Project, including a revised completion date, if necessary (with any delay in completion date being considered a Change Order, requiring DPD's written approval under Section 3.04). Developer must also deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Section 6.09 (Prevailing Wage), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment). If the reports reflect a shortfall in compliance with the requirements of Sections 8.08, 10.02 and 10.03, then there must also be included a written plan from Developer acceptable to DPD to address and cure such shortfall. At Project completion, upon the request of DPD, Developer will provide 3 copies of an updated Survey to DPD reflecting improvements made to the Property.

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

3.09 **Barricades.** Developer has installed or will install a construction barricade of a type and appearance satisfactory to the City and which barricade will be constructed in compliance with all applicable Federal, State or City laws, ordinances, rules and regulations. DPD retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content, and design of all barricades (other than the name and logo of the Project) installed after the date of this Agreement.

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

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

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

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

3.14 **Affordable Housing Requirements.** Developer acknowledges that the Project is subject to the requirements of the City's Affordable Housing Ordinance, Chapter 2-44, Section 2-44-090 of the City's Municipal Code (the "**Affordable Housing Ordinance**"), which is Exhibit B-3. Developer agrees as follows:

a. **Affordable Housing Ordinance.** Developer acknowledges receipt of a copy of Section 2-44-090 of the Municipal Code and that Developer has read and understands such Municipal Code section.

b. **Affordable Housing Undertaking.** Developer agrees to sell 14 condominium units (20.90% of the 67 total number of condominium units) at the affordable sales prices (to households at or below 100% of area median income ("AMI")) listed in Exhibit B-4.

c. **City Lien.** Developer agrees that by recording this Agreement against the Property, Developer hereby grants the City a lien against the Property as security for Developer's performance to sell affordable units as provided in Municipal Code Section 2-44-090(i)(1).

d. **City Recapture Mortgage.** A form of the City recapture mortgage (the "**City Recapture Mortgage**") is Exhibit N to this Agreement. In connection with the marketing of each affordable condominium unit, Developer agrees to attach as an exhibit to each purchase contract a copy of the City Recapture Mortgage. Developer agrees to require in each of its affordable condominium unit purchase contracts that the purchaser of each affordable condominium unit must execute the City Recapture Mortgage as a junior mortgage and must comply with the on-going requirements stated in the City Recapture Mortgage. At each closing of the sale of an affordable condominium unit, Developer will cause the fully signed and acknowledged City Recapture Mortgage to be recorded as a junior mortgage lien against the purchaser's affordable condominium unit.

e. **Eligibility Record Keeping.** Prior to the time that the City will reimburse Developer under Section 4.03 for TIF-Funded Improvements related to an affordable condominium unit which is intended by Developer to meet the affordability requirements described above, Developer must present evidence to DPD, in a form satisfactory to DPD, that

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the person(s) purchasing such unit meet the income eligibility criteria defined by the Affordable Housing Ordinance. Developer will maintain records at its principal place of business with complete documentation on income eligibility in a form acceptable to DPD. The City's Department of Housing will monitor each affordable condominium sale.

ARTICLE FOUR: FINANCING

4.01 **Total Project Cost and Sources of Funds.** The cost of the Project is estimated to be \$21,546,249 to be applied in the manner stated in the Project Budget. Such costs will be funded from the following sources when all anticipated Project financing has been completed:

Equity (subject to <u>Section 4.07</u>)	\$ 1,157,000
Lender Financing	15,909,249
TIF Financing	2,593,000 (1)
Deferred Developer Profit	<u>1,887,000</u>
ESTIMATED TOTAL	\$21,546,249 (1)

NOTE (1): All Project costs will be front-funded by Developer, provided that \$500,000 will be paid to Developer in increments of \$250,000 each when certain Project development benchmarks are met as noted below. All payments of principal and interest on the Note will occur after issuance of a Certificate of Completion as provided in Section 7.01, and subject to the terms and conditions of this Agreement.

4.02 **Developer Funds.** Equity and Lender Financing, if any, will be used to pay all Project costs, including but not limited to costs of TIF-Funded Improvements.

4.03 **City Funds.**

(a) Uses of City Funds.

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

(ii) City Funds may be used to reimburse Developer only for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit E states, by line item, the TIF-Funded Improvements for the Project contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such costs and their respective eligibility as a Redevelopment Project Cost. Reimbursement of costs through City Funds will be in the form of:

(A) \$500,000 from Incremental Taxes, and

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- (B) payment of principal and interest under the Note from Available Incremental Taxes.

The City may redeem all or any portion of the Note without premium or penalty at any time.

(iii) Developer acknowledges and agrees that no payments of principal or interest on the Note will be made by the City until a Certificate as provided in Section 7.01 has been issued by the City to Developer. A Certificate will not be issued until Developer has:

- (A) closed on 80% of all market rate and all affordable condominium units; and
- (B) met the affordable housing requirements stated in Section 3.14; and
- (C) leased 60% of the retail space in the Project; and
- (D) Developer's tenants have occupied such retail space; and
- (E) the City requirements stated in Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement) and Section 10.03 (Developer's MBE/WBE Commitment) have been met.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including this Section 4.03 and Article Five, the City hereby agrees to provide City Funds to Developer in the form of \$500,000 in cash assistance when certain Project development benchmarks have been met, and by issuing a Note for a maximum amount of \$2,093,000. The \$500,000 in cash assistance will be paid from Incremental Taxes available in the 35th/Halsted Redevelopment Project Area Special Tax Allocation Fund. The \$500,000 in cash assistance will be payable as follows:

- (i) First \$250,000. The first \$250,000 will be disbursed to Developer when DPD has verified to its satisfaction the following:
 - (A) All site preparation work for the Project has been completed; and
 - (B) Developer has obtained its foundation permit and sent a copy to DPD; and
 - (C) Developer has started foundation work for the Project.
- (ii) Second \$250,000. The second \$250,000 will be disbursed to Developer when the City issues a Certificate of Occupancy for the Project.

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Any payments under the Note are subject to the amount of Available Incremental Taxes and Incremental Taxes for the Redevelopment Area, as applicable, being sufficient for such payments. Developer and Developer's consultant will prepare for the City's review a schedule of estimated Available Incremental Taxes reflecting the Property and the Project at the time of issuance of the Certificate. The total amount of City Funds under this Agreement will be the lesser of \$2,593,000 or 12.53 % of total Project costs.

(c) Issuance of the \$2,093,000 Project Note. On even date with the Certificate issued as provided in Section 7.01, the City will issue the Note to Developer with the following terms and conditions:

(i) Principal. The principal balance for the Note will be equal to the cost of TIF-Funded Improvements incurred by Developer prior to the issuance date, up to a maximum amount of \$2,093,000. Such balance will be determined by the Certificate(s) of Expenditure issued by the City in the form of Exhibit M, upon Developer providing satisfactory evidence of expenditures for TIF-Funded Improvements and compliance with the applicable requirements and terms and conditions of this Agreement. After issuance of the Note, if the principal balance of the Note is less than \$2,093,000, then the principal balance of the Note will be increased if the City issues additional Certificate(s) of Expenditure in the form of Exhibit M up to a maximum amount of \$2,093,000. Developer acknowledges that the principal value of the Note can be no larger than the aggregate amount of the cost of TIF-Funded Improvements reflected in the Certificate(s) of Expenditure issued by the City, and such principal value may be reduced (perhaps substantially) from the maximum amount of \$2,093,000 if Developer cannot provide satisfactory evidence for TIF-Funded Improvements. If the total Project costs are less than \$21,546,249, principal on the Note will also be recalculated to reflect a principal Note balance of no more than 12.53% of total Project costs.

(ii) Interest. The interest rate will be based on the interest rate for the 20-year Treasury constant maturity as published in the Federal Reserve Statistical Release. The interest rate will be set at 325 basis points over the observed average value for the prevailing interest rates as published in said Release for the 15 consecutive previous Business Days prior to the date of issuance of the Note, but the interest rate on the Note will be in no event greater than 9.0%.

(iii) Term. The Note will be issued on even date with the Certificate issued as provided in Section 7.01 and will have a term of 16 years.

(iv) Payments of Principal and Interest.

(A) Interest on the Note will begin to accrue at the date of issuance. Amortization of principal will be over the term of 16 years as provided in the debt service schedule attached to the Note. Payments of principal and interest will be made annually on February 1st.

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- (B) No payments of principal or interest on the Note will be made until a Certificate for the Project has been issued by the City.
- (C) Except as may be otherwise provided in this Agreement, Available Incremental Taxes only will be used to pay the principal of and interest on the Note and on unpaid interest, if any. In the ordinance authorizing the issuance of the Note, the City will establish an account denominated the: "Acre Development, LLC Developer Account" within the 35th/Halsted Redevelopment Project Area Special Tax Allocation Fund. All Available Incremental Taxes will be deposited into the Acre Development, LLC Developer Account.
- (D) After the principal and interest on the Note has been paid in full and the Note canceled according to its terms, then the Acre Development, LLC Developer Account will be closed and all subsequent Available Incremental Taxes will be deposited by the City in the 35th/Halsted Redevelopment Project Area Special Tax Allocation Fund.
- (v) Insufficient Available Incremental Taxes. If the amount of Available Incremental Taxes pledged under this Agreement is insufficient to make any scheduled payment on the Note, then: (1) the City will not be in default under this Agreement or the Note, and (2) due but unpaid scheduled payments (or portions thereof) on the Note will be paid as provided in this Section 4.03 as promptly as funds become available for their payment. Interest per annum at the rate set when the Note is issued will accrue on any principal or interest payments which are unpaid because of insufficient Available Incremental Taxes.
- (vi) Pay-As-You-Go Reimbursement After Project Completion. If after the Project completion, and all redevelopment costs are known and verified by the City, the City-approved amount of costs of TIF-Funded Improvements that constitute Redevelopment Project Costs may be less than the maximum \$2,093,000 amount of the Note. Such difference in amount is defined as the "**Pay-As-You-Go Amount**". In such event, the City agrees to reimburse Developer out of Available Incremental Taxes for 30% of the annual construction and permanent financing interests costs incurred by Developer after the Closing Date up to the value of the Pay-As-You-Go Amount. The Pay-As-You-Go Amount (if any) is to be paid before the Note payments. Payments on the principal of the Note will be deferred and interest will accrue until such time as the value of the Pay-As-You-Go Amount has been paid to Developer. After such payments to Developer, the Note payments will resume according to the Note terms.
- (vii) Unpaid Balance at End of Note Term. If there is an unpaid balance at the expiration of the term of the Note, then the holder(s) of any such expired Note will be entitled to pay-as-you-go reimbursement from Available Incremental Taxes until such unpaid balance on the expired Note is paid in full. Pay-as-you-go reimbursement under this subsection is subject to: (i) surrender of the expired Note to the City, and (ii) the

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availability of unused costs of TIF-Funded Improvements which have not been used to establish the principal amount of the Note.

(viii) Prepayment. City may redeem all or any portion of the Note without premium or penalty at any time.

(ix) Cessation of Note Payments. If an Event of Default occurs, the City will have no further obligations to make any payments with respect to the Note and the City will have the remedies stated in Sections 7.03 and 15.02.

4.04 Excess Profit and Resulting Note Principal Reduction. When excess profit exists, the principal value of the Note will be reduced as follows:

(A) Aggregate Project Sales (Revenues) are defined to be:

(i) all condominium sale proceeds, plus all condominium unit upgrades, plus all parking sales, plus the estimated value of the retail components as presented to the City by Developer in Developer's application for tax incentive financing assistance will be combined to determine the aggregate sales (revenues) generated by the Project.

(B) Aggregate Project Costs are defined to be:

(i) all actual, certified hard construction Project costs (as certified by the City in its reasonable discretion) plus the estimated value of the soft Project costs (including Developer's fee) as presented to the City by Developer in Developer's application for tax incentive financing assistance will be combined to determine the aggregate Project costs.

(C) Excess Profit is defined to be:

(i) prior to the issuance of the Note, if the aggregate Project sales (revenues) value exceeds the aggregate Project costs value multiplied by 112%, then the City will reduce the principal value of the Note by 50% of the computed excess profit value.

4.05 City Rights to Discontinue or Suspend Payments under the Note. The City has the right to discontinue or suspend payments applicable to the Note under the following circumstances:

(a) Net Leaseable Square Foot Requirement. If Developer fails to maintain on an annual basis a minimum occupancy of 60% of the net leaseable area of the Project (the "Net Leaseable Square Foot Requirement") for 10 years from the date of issuance of the Certificate.

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(b) Consequences of Non-Compliance with the Net Leaseable Square Foot Requirement.

(i) 1st Year. If in any year Developer is not in compliance with the Net Leaseable Square Foot Requirement for a period of one year, then Developer will not receive Note payments. Interest will continue to accrue on the principal balance of the Note. The Developer has one year to cure the occupancy non-compliance. When the non-compliance is cured, the amount of the Note payment held as a result of the non-compliance will be returned to Developer when compliance is achieved.

(ii) 2nd Year. If there is a second year that Developer fails to comply with the Net Leaseable Square Foot Requirement, and such second year need not be consecutive to the first year, then Developer will not receive 25% of the principal and interest payments on the Note for the period including the second year of non-compliance, and interest will not accrue on the Note for such period.

(iii) 3rd Year. If there is a third year that Developer fails to comply with the Net Leaseable Square Foot Requirement, and such third year need not be consecutive to the second year, then: Developer will not receive 25% of the principal and interest payments on the Note for the period including the third year of non-compliance; interest will not accrue on the Note for such period; and the City may elect to decrease the remaining principal of the Note by 25%.

(iv) Non-Compliance Years Not Counted. A year that Developer is out of compliance with the Net Leaseable Square Foot Requirement does not count toward fulfillment of Developer's 10-year requirement stated in subparagraph (a) above.

(c) Retail Center Requirement. After the 10-year requirement for maintenance of the Net Leaseable Square Foot Requirement has expired, if Developer fails to maintain the retail portion of the Project as a retail center until the Note is paid.

(d) Prohibited Uses. If Developer uses the Property for any of the Prohibited Uses listed in Exhibit B-5 or fails to comply with the applicable zoning requirements.

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

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

4.08 **TIF Bonds.** The Commissioner of DPD may, in his or her sole discretion, recommend that the City Council approve an ordinance or ordinances authorizing the issuance of TIF Bonds in an amount which, in the opinion of the City Comptroller, is marketable under the then current market conditions. The proceeds of TIF Bonds may be used to pay the outstanding principal and accrued interest (through the date of prepayment) under the Note and for other purposes as the City may determine. The costs of issuance of the TIF Bonds would be borne solely by the City. Developer will cooperate with the City in the issuance of the TIF Bonds, as provided in Section 8.03.

4.09 **Sale of 12 City-Owned Real Property Parcels.** The City agrees to sell and Developer agrees to purchase the 12 lots located at 3434-64 South Halsted Street, respectively (the "Property"), and legally described in Exhibit B-1, for \$1,001,530 total purchase price in cash from Developer at Closing, subject to the following terms and conditions:

- (a) **Form of Deed.** The City will convey the Property to Developer by quit claim deed ("Deed"), subject only to the terms of this Agreement and the following:
- (i) The Redevelopment Plan for this Redevelopment Area.
 - (ii) The standard exceptions in an ALTA title insurance policy.
 - (iii) General real estate taxes which are not yet due and owing, subject to the City's duty under Section 4.09(d).
 - (iv) Easements, encroachments, covenants and restrictions of record and not shown of record.
 - (v) Such defects which cannot reasonably be cured but will not affect the use or marketability of the Property.
- (b) **Title Commitment and Insurance.** The City agrees to provide Developer with a current title commitment issued by Chicago Title Insurance Company showing the City in title to the Property. Developer will pay the cost of, and will be responsible for, obtaining any title insurance, extended coverage or endorsements it deems necessary.
- (c) **Survey.** Developer will be responsible for any survey it deems necessary.

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(d) Real Estate Taxes. The City agrees to use reasonable efforts to obtain the waiver of any delinquent real estate tax liens on the Property, to the extent that such taxes may be waived or abated by writing to the County Assessor a customary abatement letter or filing a motion to vacated any tax sale made in error. Developer will be responsible for all taxes accruing after the Closing.

(e) Recordation of Deed. Developer, at its expense, will promptly record the Deed at the Office of the Cook County Recorder of Deeds.

4.10 Environmental Matters Concerning the Acquired Property.

(a) The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and Developer agrees to accept the Property "as is".

(b) It is responsibility of Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property. Prior to the Closing, Developer will have the right to request a right of entry for the purpose of conducting environmental tests on the Property. If such a request is made, the City will grant Developer a right of entry for such purpose. The granting of the right of entry, however, will be contingent upon Developer obtaining all necessary permits and the following types and amounts of insurance: (x) commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured; (y) automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and (z) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to perform any work on the Property. All insurance policies will be from insurance companies authorized to do business in the State of Illinois, and will remain in effect until completion of all activity on the Property. Developer will deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. Developer expressly understands and agrees that any coverage and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities stated in this Agreement.

(c) Developer agrees to carefully inspect the Property prior to the commencement of any activity on the Property to make sure that such activity will not damage surrounding property, structures, utility lines or any subsurface lines or cables. Developer will be solely responsible for the safety and protection of the public. The City reserves the right to inspect any work being done on the Property. Developer's activities on the Property will be limited to those reasonably necessary to perform the environmental testing, or, subject to the terms of an agreed upon right of entry, remediation work. Upon completion of the work, Developer agrees to restore the Property to its original condition. Developer will keep the Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations

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incurred by or for Developer, and agrees to indemnify and hold the City harmless against any such liens.

(d) Developer agrees to deliver to the City a copy of each report prepared by or for Developer regarding the environmental condition of the Property. If prior to the Closing, Developer's environmental consultant determines that contamination exists on the Property to such extent that the parties agree that the estimated cost of remediation (such estimated cost being determined by the consultant) is too excessive for Developer, Developer may declare these Real Estate Purchase Sections (Sections 4.08 and 4.09) null and void by giving written notice thereof to the City. Developer agrees that a request to terminate the Real Estate Purchase Sections will not be made until all reports concerning the condition of the Property have been reviewed by the City.

(e) If after the Closing, the environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized, it will be the sole responsibility and obligation of Developer to take such action as is necessary to put the Property in a condition which is suitable for the intended use of the Property.

ARTICLE FIVE. CONDITIONS PRECEDENT

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

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

5.02 **Scope Drawings and Plans and Specifications.** Developer will have submitted to DPD, and DPD will have approved, the Scope Drawings and Plans and Specifications as provided in Section 3.02 or DPD has agreed to approve them as a post-closing item.

5.03 **Other Governmental Approvals.** Developer will have secured or applied for all other necessary approvals and permits required by any Federal, State, or local statute, ordinance, rule or regulation to begin or continue construction of the Project, and will submit evidence thereof to DPD.

5.04 **Financing.**

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

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

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

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

(d) The City agrees that the Note may be pledged on a collateral basis to any lender or lenders providing Lender Financing, if any.

5.05 **Acquisition and Title.** On the Closing Date, Developer will furnish the City with a copy of the Title Policy for the Property, showing Developer as the named insured. The Title Policy will be dated as of the Closing Date and will contain only those title exceptions listed as Permitted Liens on Exhibit H and will evidence the recording of this Agreement under the provisions of Section 8.17. The Title Policy will also contain the following endorsements as required by Corporation Counsel: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access, and survey.

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

Secretary of State (IL)
 Secretary of State (IL)
 Cook County Recorder
 Cook County Recorder
 Cook County Recorder
 Cook County Recorder
 Cook County Recorder
 U.S. District Court (N.D. IL)
 Clerk of Circuit Court,
 Cook County

UCC search
 Federal tax lien search
 UCC search
 Fixtures search
 Federal tax lien search
 State tax lien search
 Memoranda of judgments search
 Pending suits and judgments
 Pending suits and judgments

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

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5.07 **Surveys.** Developer will have furnished the City with 3 copies of the Survey.

5.08 **Insurance.** Developer, at its own expense, will have insured the Property and the Project as required under Article Twelve. Prior to the Closing Date, certificates required under Article Twelve evidencing the required coverages will have been delivered to DPD.

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

5.10 **Evidence of Prior Expenditures.** Developer will have provided evidence satisfactory to DPD of the Prior Expenditures as provided in Section 4.04.

5.11 **Financial Statements.** Developer will have provided Financial Statements to DPD for its 2002 and 2003 fiscal years, if available, and its most recently available unaudited interim Financial Statements.

5.12 **Additional Documentation.** Developer will have provided documentation to DPD, satisfactory in form and substance to DPD concerning Developer's employment profile and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds in the Project, if any.

5.13 **Environmental Audit.** Developer will have provided DPD with copies of all phase I environmental audits completed with respect to the Property, if any, and a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits. If environmental issues exist on the Property, the City will require written verification from the Illinois Environmental Protection Agency that all identified environmental issues have been or will be resolved to its satisfaction.

5.14 **Entity Documents.** Developer will provide a copy of its current Articles of Organization, with all amendments, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which Developer is qualified to do business; its limited liability company agreement; a secretary's certificate in such form and substance as the Corporation Counsel may require; and such other organizational documentation as the City may request.

5.15 **Litigation.** Developer will provide to Corporation Counsel and DPD a description of all pending or threatened litigation or administrative proceedings involving Developer or any Affiliate of Developer specifying, in each case, the amount of each claim, an

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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 Accepting Certificates of Expenditure.** Prior to the acceptance by DPD of any Certificate of Expenditure under the Note, Developer must submit to DPD documentation of such expenditures (in the form of waivers of lien, canceled checks, closing statements, or such other documentation as DPD may reasonably require), which will be satisfactory to DPD. Delivery by Developer to DPD of any Certificate of Expenditure hereunder will, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

- (a) the total amount of the disbursement request represents the actual amount payable to (or paid to) the General Contractor and/or subcontractors for work performed on the Project, and/or their payees;
- (b) all amounts shown as previous payments on the current certificate have been paid to the parties entitled to such payment;
- (c) Developer has approved all work and materials for the current certificate and, to the reasonable belief of Developer, such work and materials conform to the Plans and Specifications;
- (d) the representations and warranties of Developer contained in this Agreement are true and correct and Developer is in compliance with all covenants contained herein;
- (e) Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Project except for the Permitted Liens; and
- (f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred.
- (g) the Project is In Balance. The Project will 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 means: (i) the undisbursed Lender Financing, if any; (ii) the undisbursed Equity; and (iii) any other amounts deposited by Developer under this Agreement. Developer agrees that, if the particular phase of the Project is not In Balance, Developer will, within 10 days after a written request by the City, deposit either with the lender providing any of the Lender Financing or with the construction escrow agent, cash in an amount that will place the particular phase of the Project In Balance, which deposit shall first be exhausted upon the request of such lender before any further acceptance of a Certificate of Expenditure shall be made.

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The City will not execute any Certificate of Expenditure for the Note unless Developer has satisfied the City that Developer has complied, or is implementing a plan to comply, with the requirements of Sections 8.08, 10.02 and 10.03. The City will have the right, in its reasonable discretion, to require Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any acceptance of a Certificate of Expenditure by the City will be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct. In addition, Developer will have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements not inconsistent with this Agreement and stated in the TIF Bond Ordinance, if any, the Bonds, if any, the TIF Bonds, if any, the TIF Ordinances, the Notes, and this Agreement.

ARTICLE SIX: AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors.

(a) DPD acknowledges that Developer has selected Delko Construction Co., Inc., an Affiliate, as the General Contractor for the Project. Developer will cause the General Contractor to solicit bids for work on the Project solely from qualified subcontractors eligible to do business with the City of Chicago.

(b) Developer must submit copies of the Construction Contract to DPD as required under Section 6.02 below. Upon the written request of DPD, Developer will provide photocopies of all subcontracts entered or to be entered into in connection with the Project within five (5) Business Days of the execution thereof. Developer must ensure that the General Contractor will not (and must cause the General Contractor to ensure that the subcontractors will not) begin work on the Project (or any phase thereof) until the applicable Plans and Specifications for that phase have been approved by DPD and all requisite permits have been obtained.

6.02 Construction Contract. Prior to the execution thereof, Developer must deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to work on the Project, for DPD's prior written approval. Following execution of such contract by Developer, the General Contractor and any other parties thereto, Developer must deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

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

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6.04 **Employment Opportunity.** Developer will contractually obligate and cause the General Contractor to agree and contractually obligate each subcontractor to agree to the provisions of Article Ten; provided, however, that the contracting, hiring and testing requirements associated with the MBE/WBE and the City resident obligations in Article Ten shall be applied on an aggregate basis and the failure of the General Contractor to require each subcontractor to satisfy or the failure of any one subcontractor to satisfy, such obligation shall not result in a default or a termination of this Agreement or require payment of the City resident hiring shortfall amounts so long as such Article Ten obligations are satisfied on an aggregate basis.

6.05 **Other Provisions.** In addition to the requirements of this Article Six, the Construction Contract and each contract with any subcontractor must contain provisions required under Section 1.04 (Change Orders), Section 8.08 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Construction Worker Employment Requirement), Section 10.03 (Developer's MBE/WBE Commitment), Article Twelve (Insurance) and Section 14.01 (Books and Records).

ARTICLE SEVEN: COMPLETION OF CONSTRUCTION

7.01 Certificate of Completion of Construction.

(a) Upon completion of the construction of the Project in compliance with the terms and conditions of this Agreement, and upon Developer's written request, DPD will issue to Developer a certificate of completion of construction in recordable form (the "Certificate") certifying that Developer has fulfilled its obligation to complete the Project in compliance with the terms and conditions of this Agreement. DPD will respond to Developer's written request for a Certificate within 30 days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed and the measures which must be taken by Developer in order to obtain the Certificate. Developer may resubmit a written request for a Certificate upon completion of such measures, and the City will respond within 30 days in the same way as the procedure for the initial request. Such process may repeat until the City issues a Certificate.

(b) Developer acknowledges and understands that the City will not issue a Certificate until the following conditions have been met:

(i) Developer has closed on 80% of all market rate and all affordable condominium units; and

(ii) Developer has met the affordable housing requirements stated in Section 3.14; and

(iii) Developer has leased 60% of the retail space in the Project; and

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- (iv) Developer's tenants have occupied such retail space; and
- (v) The City's Monitoring and Compliance unit has determined in writing that Developer is in complete compliance with all City requirements (M/WBE, City residency and prevailing wage) as required in this Agreement.

7.02 Effect of Issuance of Certificate; Continuing Obligations.

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

(b) Those covenants specifically described at Section 8.02 (Covenant to Redevelop) and Section 8.18 (Real Estate Provisions) and Section 8.19 (Prohibited Uses) 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. The other executory terms of this Agreement that remain after the issuance of a Certificate will be binding only upon Developer or a permitted assignee of Developer who, as provided in Section 18.15 (Assignment) of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

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

- (a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed under this Agreement;
- (b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. If the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available under Section 4.01, Developer will 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; and

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(c) the right to seek reimbursement of the City Funds from Developer, provided that the City is entitled to rely on an opinion of counsel that such reimbursement will not jeopardize the tax-exempt status, if any, of any TIF Bonds.

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

ARTICLE EIGHT: REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.

8.01 **General.** Developer represents, warrants, and covenants, as of the date of this Agreement and as of the date of issuance of the Note, that:

(a) Developer is an Illinois limited liability company, duly organized, validly existing and qualified to do business in Illinois;

(b) Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement or has otherwise applied for permits and approvals required to complete the Project;

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

(d) Developer has acquired and will maintain good, indefeasible and merchantable fee simple title to the Property (and improvements) free and clear of all liens except for the Permitted Liens or Lender Financing, if any, as disclosed in the Project Budget;

(e) Developer is now, and until the earlier to occur of the expiration of the Term of the Agreement and the date, if any, on which Developer has no further economic interest in the Project, will remain solvent and able to pay its debts as they mature;

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

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(g) Developer has or will acquire as necessary and will 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) Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which Developer or any of its assets is bound which would materially adversely effect its ability to comply with its obligations under this Agreement;

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

(j) prior to the issuance of a Certificate, if it would materially adversely affect Developer's ability to perform its obligations under this Agreement, Developer will not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose (directly or indirectly) of all or substantially all of its assets or any portion of the Property or the Project (including any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business, and except sales of condominium units and leases to commercial tenants; (3) enter into any transaction outside the ordinary course of Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to Developer's financial condition;

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

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

8.02 Covenant to Redevelop. Upon DPD's approval of the Scope Drawings and Plans and Specifications, and the Project Budget as provided in Sections 3.02 and 3.03, and Developer's receipt of all required building permits and governmental approvals, Developer will redevelop the Property in compliance with this Agreement, the TIF Ordinances, the Scope Drawings, the Plans and Specifications, the Project Budget and all amendments thereto, and all

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Federal, State and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project and/or Developer. The covenants stated in this Section 8.02 will run with the land and will be binding upon any transferee, until fulfilled as evidenced by the issuance of a Certificate.

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

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

8.05 Other Bonds. At the request of the City, Developer will agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole and absolute discretion) TIF Bonds or other bonds ("**Bonds**") in connection with the Project or the Redevelopment Area, the proceeds of which are to be used to reimburse the City for expenditures made in connection with the TIF-Funded Improvements; provided, however, that any such amendments will not have a material adverse effect on Developer or the Project. Developer will cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition, and assisting the City in its preparation of an offering statement with respect thereto. Developer will not have any liability with respect to any disclosures made in connection with any such issuance that are actionable under applicable securities laws unless such disclosures are based on factual information provided by Developer that is determined to be false and misleading.

8.06 Employment Opportunity.

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

(b) Developer will deliver to the City written progress reports by draw, but not less than quarterly, detailing compliance with the requirements of Sections 8.08, 10.02 and 10.03 of this Agreement. If any such reports indicate a shortfall in compliance, Developer will also deliver a plan to DPD which will outline, to DPD's satisfaction, the manner in which Developer will correct any shortfall.

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

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8.08 **Prevailing Wage.** Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor to pay and to contractually cause each subcontractor to pay, the prevailing wage rate as ascertained by the State Department of Labor (the "**Labor Department**"), to all of their respective employees working on constructing the Project or otherwise completing the TIF-Funded Improvements. All such contracts will list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Labor Department revises such prevailing wage rates, the revised rates will apply to all such contracts. Upon the City's request, Developer will provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.08.

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

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

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

8.12 **Financial Statements.** If requested by DPD, Developer will obtain and provide to DPD Financial Statements for Developer's fiscal year ended 2002 or 2003, as applicable, and each yearly thereafter for the Term of the Agreement. In addition, if requested by DPD, Developer will 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.

8.13 **Insurance.** Solely at its own expense, Developer will comply with all provisions of Article Twelve.

8.14 **Non-Governmental Charges.**

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

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

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charges by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charges, prevent the imposition of a lien or remove such lien, or prevent the transfer or forfeiture of the Property or the Project (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend Developer's covenants to pay any such Non-Governmental Charges at the time and in the manner provided in this Section 8.14); 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 will require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such transfer or forfeiture of the Property or the Project or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charges and all interest and penalties upon the adverse determination of such contest.

8.15 Developer's Liabilities. Developer will not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Agreement. Developer will immediately notify DPD of any and all events or actions which may materially affect Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements related to this Agreement or the Project.

8.16 Compliance with Laws.

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

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(b) Covenant. Developer covenants that the Property and the Project will be operated and managed in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes. Upon the City's request, Developer will provide evidence to the City of its compliance with this covenant.

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

8.18 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. Subject to subsection (ii) below, Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon Developer or all or any portion of the Property or the Project. "**Governmental Charge**" means all Federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to Developer, the Property, or the Project, including but not limited to real estate taxes.

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

(x) Developer will demonstrate to DPD's satisfaction that legal proceedings instituted by Developer contesting or objecting to a Governmental Charge will conclusively operate to prevent or remove a lien against, or the sale or transfer or forfeiture of, all or any part of the Property or the Project to satisfy

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such Governmental Charge prior to final determination of such proceedings, and/or;

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

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

(c) Real Estate Taxes.

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

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

(iii) No Reduction in Real Estate Taxes. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer

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will, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in Exhibit J for the applicable year.

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

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

8.19 **Prohibited Uses.** During the term of the Agreement, the Project and the Property will not be used for any of the purposes scheduled in Exhibit B-5, without the prior written consent of DPD. The covenants stated in this Section 8.19 will run with the land and will be binding upon any transferee.

8.20 **Reserved.**

8.21 **Job Readiness Program.** If requested by the City, Developer will use its best efforts to encourage its tenants at the Project to participate in job readiness programs established by the City to help prepare individuals to work for businesses located within the Redevelopment Area.

8.22 **Public Benefits Program.** On or after the Closing Date, Developer will undertake a public benefits program ("**Public Benefits Program**") described in more detail in Exhibit L. If the Public Benefit Program is on-going, then Developer will provide the City with

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a status report on an annual basis describing in sufficient detail Developer's compliance with the Public Benefits Program.

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

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

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

ARTICLE NINE: REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY

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

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

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ARTICLE TEN: DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.*, Municipal Code, except as otherwise provided by said ordinance and as amended from time-to-time (the "**Human Rights Ordinance**"). Each Employer must 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, must 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 will comply with all applicable Federal, State and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the State Human Rights Act, 775 ILCS 5/1-101 *et. seq.* (2002 State Bar Edition, as amended), and any subsequent amendments and regulations promulgated thereto.

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

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

(e) Each Employer will include the foregoing provisions of subparagraphs (a) through (d) in every construction contract entered into in connection with the Project (other than for remediation and demolition entered into prior to the date of this Agreement), and will 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 will be binding upon each contractor, subcontractor or Affiliate, as the case may be.

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

10.02 City Resident Construction Worker Employment Requirement.

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

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

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

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

(e) Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) will be submitted to the Commissioner of DPD in triplicate, which will identify

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

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

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

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

(i) When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this Article concerning the worker hours performed by actual residents of the City or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Article. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project Budget undertaken by Developer (and specifically excluding any tenant improvements which are not undertaken by Developer) (the product of $.0005 \times$ such aggregate hard construction costs) (as the same will be evidenced by approved contract value for the actual contracts) will be surrendered by Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

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

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

(k) Developer will cause or require the provisions of this Section 10.02 to be included in all construction contracts and subcontracts related to the Project.

10.03 Developer's MBE/WBE Commitment. Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, will 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 construction budget set forth in Exhibit D-2 hereto will be expended for contract participation by MBEs or WBEs:

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

Developer, its successors and assigns and the General Contractor will each use their respective good faith efforts to exceed the percentages set forth above.

(b) For purposes of this Section 10.03 only, Developer (and any party to whom a contract is let by Developer in connection with the Project) will be deemed a "contractor" and this Agreement (and any contract let by Developer in connection with the Project) will 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, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of: (i) the MBE or WBE participation in such joint venture; or, (ii) the amount of any actual work performed on the Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE will not be credited more than once with regard to Developer's MBE/WBE commitment as described in this Section 10.03. 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.

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(d) Developer will deliver quarterly reports to DPD during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports will include inter alia the name and business address of each MBE and WBE solicited by Developer or the General Contractor to work on the 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 Developer's compliance with this MBE/WBE commitment. DPD will have access to 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 Article Fourteen of this Agreement, on 5 Business Days notice, to allow the City to review Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, Developer will 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 Developer's MBE/WBE commitment as described in this Section 10.03 must be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

(g) Prior to execution of this Agreement, Developer, the General Contractor and all major subcontractors then under contract shall be required to meet with the monitoring staff of DPD with regard to Developer's compliance with its obligations under this Section 10.03. During this meeting, Developer must demonstrate to DPD its plan to achieve its obligations under this Section 10.03, the sufficiency of which shall be approved by DPD. During the Project, Developer will submit the documentation required by this Section 10.03 to the monitoring staff of DPD. This information will include the following: (1) subcontractor's activity report; (2) General Contractor's certification concerning labor standards and prevailing wage requirements; (3) General Contractor letter of understanding; (4) monthly utilization report required under Section 3.07; (5) authorization for payroll agent; (6) certified payroll; and (7) evidence that MBE/WBE contractor associations have been informed of the Project as required. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that Developer is not complying with its obligations hereunder will, upon the delivery of written notice to Developer, be deemed an Event of Default hereunder. Any such Event of Default will be subject to the cure provisions of Section 15.03(b).

(h) Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may withhold any further payment of any City Funds to Developer or the General Contractor, or seek any other remedies against Developer available at law or in equity.

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ARTICLE ELEVEN: ENVIRONMENTAL MATTERS

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

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

ARTICLE TWELVE: INSURANCE

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

ARTICLE THIRTEEN: INDEMNIFICATION

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

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- (i) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or
- (ii) 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 feature or 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 Developer or any Affiliate or any of their respective agents, officers, directors, equity holders, employees, contractors or persons acting under the control or at the request of Developer or any Affiliate; or
- (iv) Developer's failure to cure any misrepresentation in this Agreement or any other document or agreement relating hereto; or
- (v) any act or omission by Developer or any Affiliate.

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

ARTICLE FOURTEEN: MAINTAINING RECORDS/RIGHT TO INSPECT

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

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14.02 **Inspection Rights.** Upon 3 Business Days notice, any authorized representative of the City will have access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

ARTICLE FIFTEEN: DEFAULT AND REMEDIES

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

- (a) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under this Agreement or any related agreement;
- (b) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under any other agreement with any person or entity if such failure may have a material adverse effect on Developer's business, property (including the Property or the Project), assets (including the Property or the Project), operations or condition, financial or otherwise;
- (c) the making or furnishing by Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;
- (d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt by Developer to create, any lien or other encumbrance upon the Property or the Project, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;
- (e) the commencement of any proceedings in bankruptcy by or against Developer or Developer's ultimate parent entity or for the liquidation or reorganization of Developer or Developer's ultimate parent entity, or alleging that Developer or Developer's ultimate parent entity is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer's or Developer's ultimate parent entity's debts, whether under the United States Bankruptcy Code or under any other state or Federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving Developer or Developer's ultimate parent entity; provided, however, that if such commencement of proceedings is involuntary, such action will not constitute an Event of Default unless such proceedings are not dismissed within 60 days after the commencement of such proceedings;
- (f) the appointment of a receiver or trustee for Developer or Developer's ultimate parent entity, for any substantial part of Developer's or Developer's ultimate parent entity's

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assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Developer or Developer's ultimate parent entity; provided, however, that if such appointment or commencement of proceedings is involuntary, such action will not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within 60 days after the commencement thereof;

(g) the entry of any judgment or order against Developer for an amount in excess of \$1.0 million which remains unsatisfied or undischarged and in effect for 60 days after such entry without a stay of enforcement or execution;

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

(i) the dissolution of Developer or Developer's ultimate parent entity; or

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

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

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

15.03 Curative Period.

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

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

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period, Developer will not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such 30 day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

ARTICLE SIXTEEN: MORTGAGING OF THE PROJECT

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

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

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

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

ARTICLE SEVENTEEN: NOTICES

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

If to the City:

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

With Copies To:

City of Chicago
 Corporation Counsel
 Attn: Finance and Economic Development Division
 121 North LaSalle Street, Room 600
 Chicago, IL 60602
 312/744-0200 (Main No.)
 312/744-8538 (Fax)

If to Developer:

Acre Development, LLC
 c/o Delko Construction Company, Inc.
 4849 N. Milwaukee Avenue, Suite 302
 Chicago, Illinois 60630
 Attn: Demetrios L. Kozonis
 Telephone: 773/282-5500
 Fax: 773/282-7627

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With Copies To:

Nandia P. Black, Esq.
 2824 W. Diversey Avenue
 Chicago, IL 60647
 Telephone: 312/485-4244
 Fax: 312/545-0147

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

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

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

ARTICLE EIGHTEEN: ADDITIONAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18.15 **Assignment.** Prior to the issuance by the City to Developer of a Certificate, Developer may not sell, assign or otherwise transfer its interest in this Agreement or the Note in whole or in part without the written consent of the City; provided, however, that Developer may pledge, on a collateral basis, the right to receive City Funds under the Note to a lender providing Lender Financing, if any, which has been identified to the City as of the Closing Date. Any successor in interest to Developer under this Agreement will certify in writing to the City its

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agreement to abide by all remaining executory terms of this Agreement, including but not limited to Section 8.25 (Survival of Covenants) hereof, for the Term of the Agreement. Developer hereby consents to the City's transfer, assignment or other disposal of this Agreement at any time in whole or in part.

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

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

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

18.19 **Business Economic Support Act.** Under the Business Economic Support Act (30 ILCS 760/1 et seq. 2002 State Bar Edition, as amended), if Developer is required to provide notice under the WARN Act, Developer will, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where Developer has locations in the State. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

18.20 **Approval.** Wherever this Agreement provides for the approval or consent of the City, 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 must 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 will act for the City or DPD in making all approvals, consents and

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determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

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

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

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

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

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

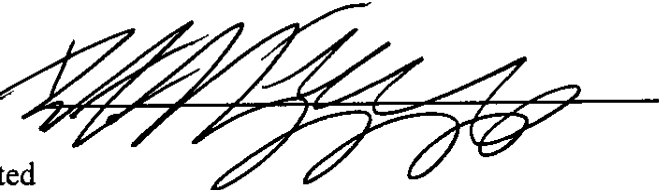
18.26 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, each party agrees to pay upon demand the other party's out-of-pocket expenses, including attorneys' fees, incurred in connection with the enforcement of the provisions of this Agreement, if such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

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

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

ACRE DEVELOPMENT, LLC, an Illinois limited liability company

By: 

Printed

Name: Demetrios L. Kozonis

Title: Manager

CITY OF CHICAGO

By: _____

_____,
Commissioner,
Department of Planning and Development

Property of Cook County Clerk's Office

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

ACRE DEVELOPMENT LLC, an Illinois limited liability company

By: _____

Printed Name: _____

Title: _____

CITY OF CHICAGO

By:  _____

DENISE M. CASALINO, Commissioner,

Department of Planning and Development

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) ss
 COUNTY OF COOK)

I, Shirley Polinski, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Demetrios L. Kozonis, personally known to me to be the Manager (title) of Acre Development, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by Developer, as his free and voluntary act and as the free and voluntary act of Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 29th day of June, 2004.



Shirley Polinski
 Notary Public

My Commission Expires June 7, 2007

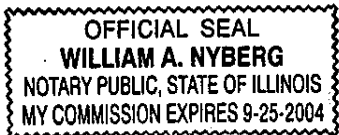
(SEAL)

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

GIVEN under my hand and official seal this 29th day of JUNE, 2004.



William A. Nyberg
Notary Public

My Commission Expires 09/25/04

County Clerk's Office

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

SCHEDULE A

DEFINITIONS

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

"35th/Halsted Redevelopment Project Area Special Tax Allocation Fund" means the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes (as defined below) will be deposited.

"Act" has the meaning defined in Recital B.

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

"Affiliate" means any individual, corporation, partner, partnership, trust or entity which owns or controls a controlling interest, or is owned or controlled by, or is under common ownership or control with, in whole or in part, Developer or any successor to Developer or its respective subsidiary(ies) or parent(s).

"Affordable Housing Ordinance" has the meaning defined for such term in Section 3.14.

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

"AMI" has the meaning defined in Section 3.14.

"Available Incremental Taxes" means an amount equal to 90% of the Incremental Taxes (as defined below) deposited after the Closing Date in the 35th/Halsted Redevelopment Project Area Special Tax Allocation Fund (as defined above) attributable to the taxes levied on the Property and the Project, using the year 1995 as a base year for equalized assessed valuation.

"Available Project Funds" has the meaning defined for such phrase in Section 5.16(g).

"Bonds" has the meaning defined in Section 8.05.

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

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"Certificate" means the Certificate of Completion of Construction described in Section 7.01.

"Certificate of Expenditure(s)" means the certificates, in the form of Exhibit M hereto, issued by the City to increase the principal amount of the Note.

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

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

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

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

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

"City Group Member" has the meaning defined in Section 8.10.

"City Recapture Mortgage" has the meaning defined in Section 3.14.

"Closing Date" means the date of signature and delivery of this Agreement by all parties hereto.

"Construction Contract" means that certain contract substantially in the form of Exhibit E, to be entered into between Developer and the General Contractor (as defined below) providing for construction of the TIF-Funded Improvements. The parties may agree that the Construction Contract may be provided after Closing.

"Corporation Counsel" means the City's Office of Corporation Counsel.

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

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

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

"Environmental Laws" means any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C.

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Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago (as defined below).

"Equity" means funds of Developer (other than funds derived from Lender Financing (as defined below)) irrevocably available for the Project, in the amount stated in Section 4.01 hereof, which amount may be increased under Section 4.07 (Cost Overruns).

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

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

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

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

"Governmental Charge" has the meaning defined in Section 8.18(a).

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

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

"In Balance" has the meaning defined in Section 5.16(g).

"Incremental Taxes" means such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to, and when collected are paid to, the Treasurer of the City for deposit by the Treasurer into a special tax allocation fund established to pay Redevelopment Project Costs (as defined below) and obligations incurred in the payment thereof, such fund for the purposes of this Agreement being the 35th/Halsted Redevelopment Project Area Special Tax Allocation Fund.

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

"Labor Department" has the meaning defined in Section 8.08.

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

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

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

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

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

"Net Leaseable Square Foot Requirement" has the meaning defined in Section 4.05.

"New Mortgage" has the meaning defined in Section 16.01.

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

"Note" means the taxable City of Chicago Tax Increment Allocation Revenue Note R-1 (Acre Development, LLC Redevelopment Project), Taxable Series A to be in the form attached hereto as Exhibit M in the maximum principal amount of up to \$2,093,000 to be issued by the City to Developer when the Certificate under Section 7.01 is issued to Developer. The Note will bear interest at a market rate set at the issue date, but in no event greater than 9% and will provide for accrued but unpaid interest to bear interest at the same annual rate, all payable as of each February 1. The payment of the amounts due under the Note will be secured only by the Available Incremental Taxes, unless the City, in its sole discretion, elects to use other legally available funds to make payments with respect to the Note. The Note will have a term ending on the earlier to occur of: (i) 16 years from the date of issuance or (ii) the date on which the Term of the Agreement ends.

"Pay-As-You-Go Amount" has the meaning defined in Section 4.03.

"Permitted Liens" means those liens and encumbrances against the Building and/or the Project stated in Exhibit H.

"Permitted Mortgage" has the meaning defined in Section 16.01.

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

"Prior Expenditure(s)" has the meaning defined in Section 4.06.

"Project" has the meaning defined in Recital D.

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

"Property" has the meaning defined in Recital D and Section 4.09, and as legally described in Exhibit B-1.

"Public Benefits Program" has the meaning defined in Section 8.22.

"Redevelopment Area" has the meaning defined in Recital C and as legally described in Exhibit A.

"Redevelopment Plan" has the meaning defined in Recital E.

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

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

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

"State" means the State of Illinois as defined in Recital A.

"Survey" means an urban 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, reasonably acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and any updates thereof to reflect improvements to the Property as required by the City or the lender(s) providing Lender Financing, if any).

"Term of the Agreement" means the period of time commencing on the Closing Date and ending on December 31, 2021, being the date when tax collections applicable to the 23rd year from the date of the TIF Ordinances ends.

"TIF Adoption Ordinance" has the meaning stated in Recital C.

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"**TIF Bonds**" has the meaning defined for such term in Recital F.

"**TIF Bond Ordinance**" has the meaning stated in Recital F.

"**TIF Bond Proceeds**" has the meaning stated in Recital F.

"**TIF Ordinances**" has the meaning stated in Recital C.

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

"**Title Company**" means Mercury Title Company, L.L.C.

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

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

"**WBE(s)**" means a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a woman-owned business enterprise.

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

SCHEDULE B

ARTICLE TWELVE: INSURANCE REQUIREMENTS

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

(a) Prior to Execution and Delivery of this Agreement

(i) Workers' Compensation and Employers Liability Insurance

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

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

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

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

(i) Workers Compensation and Employers Liability Insurance

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

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

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

(iii) Automobile Liability Insurance (Primary and Umbrella)

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

(iv) Railroad Protective Liability Insurance

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

(v) All Risk Builders Risk Insurance

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

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(vi) Professional Liability

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

(vii) Valuable Papers Insurance

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

(viii) Contractor's Pollution Liability

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

(c) Other Requirements

- (i) Developer will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Developer will submit evidence of insurance on the City Insurance Certificate Form or commercial equivalent prior to closing.

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The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer must not be deemed to be a waiver by the City. Developer will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance will not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this Agreement until proper evidence of insurance is provided.

- (ii) The insurance will provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any and all deductibles or self insured retentions on referenced insurance coverages are borne by Developer.
- (iv) Developer agrees that insurers must waive rights of subrogation against the City, its employees, elected officials, agents, or representatives.
- (v) Developer expressly understands and agrees that any coverages and limits furnished by Developer will in no way limit Developer's liabilities and responsibilities specified within the Agreement documents or by law.
- (vi) Developer expressly understands and agrees that Developer's insurance is primary and any insurance or self insurance programs maintained by the City will not contribute with insurance provided by Developer under the Agreement.
- (vii) The required insurance will not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.
- (viii) Developer will require its general contractor and all subcontractors to provide the insurance required herein or Developer may provide the coverages for the contractor or subcontractors. All contractors and subcontractors will be subject to the same requirements of Developer unless otherwise specified herein.
- (ix) If Developer, contractor or subcontractor desires additional coverages, Developer, contractor and each subcontractor will be responsible for the acquisition and cost of such additional protection.

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- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not, without Developer's written consent, increase such requirements.

Property of Cook County Clerk's Office

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT A

REDEVELOPMENT AREA LEGAL DESCRIPTION

A legal description of the Redevelopment Area is attached to this exhibit cover sheet.

Property of Cook County Clerk's Office

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37312

JOURNAL-CITY COUNCIL-CHICAGO

1/14/97

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

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

[Exhibit "C" referred to in this ordinance printed on page 37316 of this Journal.]

Exhibits "A" and "B" referred to in this ordinance read as follows:

Property of Cook County

Exhibit "A".

Legal Description.

That part of Section 5 and Section 6, Township 38 North, Range 14 East of the Third Principal Meridian and Section 32 and Section 33, Township 39 North, Range 14 East of the Third Principal Meridian, described as follows:

beginning at the southwest corner of said Section 32, being the intersection of the centerline of Peashing Road and the centerline of Ashland Avenue; thence north, along the west line of said Section 32, being the centerline of Ashland Avenue, to the centerline of 33rd Street; thence east, along the centerline of said 33rd Street and its easterly extension, to the west line of the south fork of the south branch of the Chicago River; thence northwesterly, along said westerly line of the south fork of the south branch of the Chicago River, to the westerly extension of the north line of Lot 28 in Assessor's Division of the northwest quarter and the west half of the northeast quarter of said Section 32, recorded July 16, 1857 (Ante-Fire); thence east, along the aforescribed line and its easterly extension, to the east line of Benson Street; thence south and southeast, along said east line of Benson Street, to the north line of 32nd Place; thence east, along said north line of 32nd Place, to the east line of Throop Street; thence, south, along said east line of Throop Street, to the north line of 33rd Street; thence east, along said north line of 33rd Street, to the east line of Racine Avenue; thence south, along said east line of Racine Avenue, to the north line of 34th Place; thence east, along said north line of 34th Place, to the west line of an alley located between Carpenter Street and Morgan Street; thence north, along said west line of an alley, to the north line of 32nd Place; thence east, along said north line of 32nd Place, to the west line of an alley located 117.37 feet (more or less) west of the west line of

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REPORTS OF COMMITTEES

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Morgan Street; thence north, along said west line of an alley, to a point on the north line of an alley located 140.25 feet (more or less) north of the north line of 32nd Place, said point also being the southwest corner of Lot 5 in Catholic Bishop's Subdivision of Block 4 in Assessor's Division of the northwest quarter and the west half of the northeast quarter of said Section 32, recorded October 25, 1884 as Document Number 583560; thence east, along the north line of said alley, also being along the south line of Lots 3 through 5 (inclusive) in said Catholic Bishop's Subdivision, to the southeast corner of said Lot 3; thence north, along the east line of said Lot 3; thence west, along the north line of said Lots 3 through 5 (inclusive) in said Catholic Bishop's Subdivision, also being the south line of 32nd Street, to the northwest corner of said Lot 5; thence north, to the north line of said 32nd Street, to a point on the west line of an alley located 118.2 feet (more or less) west of the west line of Morgan Street; thence north, along the west line of said alley, to the south line of 31st Place; thence north, to the north line of said 31st Place at a point on the west line of an alley located 117.25 feet (more or less) west of the west line of Morgan Street; thence north, along said west line of an alley, to a point on the north line of 31st Place, said point also being the southwest corner of Lot 5 in Wilder's Subdivision of Blocks 1 and 4 of Assessor's Division of the west half of the northeast quarter of said Section 32 re-recorded December 16, 1872 as Document 72259; thence east, along the north line of said alley, also being along the south line of Lots 2 through 5 (inclusive) in said Wilder's Subdivision, to the southeast corner of said Lot 2; thence north, along the east line of said Lot 2 and its northerly extension, to the centerline of 31st Street; thence east, along said centerline of 31st Street, to a point 126.2 feet east of the centerline of Morgan Street; thence south, along a line 126.2 feet east of and parallel to the centerline of Morgan Street, to the south line of 32nd Street; thence east, along said south line of 32nd Street, to a point 151.8 feet east of the centerline of Morgan Street; thence south, along a line 151.8 feet east of and parallel to the centerline of Morgan Street, to the north line of 33rd Street; thence east, along said north line of 33rd Street, to a point on the northerly extension of the east line of an alley located 179 feet (more or less) east of the centerline of Morgan Street; thence south, along the east line of said alley, to the north line of 35th Street; thence east, along said north line of 35th Street, to the west line of an alley located 179 feet (more or less) west of the centerline of Halsted Street; thence north, along the west line of said alley, to the south line of 33rd Street; thence west, along the south line of said 33rd Street, to the southerly extension of the west line of an alley located 188 feet (more or less) west of the centerline of Halsted Street; thence north, along the west line of said alley, to the centerline of 31st Street; thence east, along said centerline of 31st Street, to the northerly extension of the east line of an alley located 174 feet (more or less) east of the centerline of Halsted Street; thence south, along the east line of said alley, to the south line of said

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JOURNAL--CITY COUNCIL--CHICAGO

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1/14/97

Section 33, also being the centerline of Pershing Road; thence west, along the south line of said Section 33 and the south line of said Section 32, to the east line of the northwest quarter of the northwest quarter of said Section 5; thence south, along the aforesaid east line, to the north right-of-way line of the Penn Central Railroad main right-of-way; thence southwest, along the aforesaid north right-of-way line, to the north line of Lot 4 in Circuit Court Partition of the northwest quarter of the northwest quarter of said Section 5, recorded April 23, 1874 as Case Number 6432; thence west, northwest, and southwest, along the northerly line of said Lot 4, to the east line of Ashland Avenue; thence north, along the east line of said Ashland Avenue, to the intersection with the easterly extension of a line that is 548.58 feet south of and parallel with the north line of the northeast quarter of said Section 6; thence west, along the aforescribed parallel line, to the intersection with a line that is 1,039.34 feet west of the east line of said Section 6; thence north, along the aforescribed 1,039.34 foot line, 15.58 feet; thence westerly, along a line that intersects a line 2,013.04 feet west of the east line of said Section 6, 520.95 feet south of the north line of said northeast quarter; thence south, along the aforescribed 2,013.04 foot line, 12.05 feet; thence southwesterly, on a curve, concave northwesterly, having a radius of 418.5 feet, an arc distance of 276.72 feet, to a point of tangency; thence westerly, along a line that intersects the east line of the northwest quarter, 633.25 feet south of the north line of said northwest quarter; thence continuing westerly, along the aforescribed course, 306.00 feet; thence northerly, 52.25 feet; thence westerly, 1.83 feet; thence northerly, 308.00 feet; thence westerly, 5.00 feet; thence northerly, 66.00 feet; thence westerly, 14.00 feet; thence northerly, to the intersection with said north line of the northwest quarter of said Section 6, said line also being the centerline of said Pershing Road; thence easterly, along said north line of the northwest and northeast quarters of Section 6, also being the centerline of Pershing Road, to the point of beginning; excepting therefrom that part of the east half of the southeast quarter of said Section 32, described as follows:

beginning at the northeast corner of 37th Place and Sangamon Street; thence north, along the east line of said Sangamon Street, to the north line of 36th Street; thence west, along said north line of 36th Street, to the east line of an alley located 206 feet (more or less) west of the west line of said Sangamon Street; thence north, along the east line of said alley, to the south line of an alley located 147 feet (more or less) north of the north line of 35th Street; thence east, along the south line of said alley, to the west line of an alley located 168 feet (more or less) west of the west line of Halsted Street; thence south, along the west line of said alley, to the north line of said 37th Place; thence west, along the north line of said 37th Place, to the point of beginning, all in the City of Chicago, Cook County, Illinois.

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT B-1

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 49 TO 60, BOTH INCLUSIVE, IN BLOCK 4 OF BROWN'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTH 45 ACRES OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Additional information for each lot is as follows:

<u>Common Address</u>	<u>Lot</u>	<u>PIN Number</u>
3434 S. Halsted	49	17-32-227-032
3434 S. Halsted	50	17-32-227-032
Note: Lots 49 and 50 share the same PIN Number		
3440-46 S. Halsted	51	17-32-227-033
3440-46 S. Halsted	52	17-32-227-034
3440-46 S. Halsted	53	17-32-227-035
3450 S. Halsted	54	17-32-227-036
3452 S. Halsted	55	17-32-227-037
3454 S. Halsted	56	17-32-227-038
3456 S. Halsted	57	17-32-227-039
3458 S. Halsted	58	17-32-227-040
3460-3466 S. Halsted	59	17-32-227-041
3460-3466 S. Halsted	60	17-32-227-042

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Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT B-5

SCHEDULE OF PROHIBITED USES/ APPROVED TENANTS FOR THE PROPERTY

A. Prohibited Uses

1. Funeral homes.
2. Production, manufacturing and/or industrial use.
3. "Head Shops," pornographic "adult" bookstores, tattoo parlors, massage parlors.
4. Car washes, gasoline or service stations, or the display, repair, lease, rent or sale of any motor vehicle, boat or trailer.
5. Any business with drive-up or drive-through lanes.
6. Any use which creates a nuisance or materially increases noise or emissions of dust, odor, smoke or gases.
7. Any use which materially increases the risk of fire, explosion or radioactive hazard.
8. Any use involving Hazardous Materials.
9. Thrift stores or flea markets, excluding auction rooms, art or antique stores, or establishments selling books on a consignment basis.

B. Approved Tenants

Developer will provide a schedule of approved tenants as a post-closing item.

UNOFFICIAL COPY**Project Budget - 3/05/04**

Land Acquisition		\$1,001,530
Alley Vacation		\$50,000
Demolition		\$0
Site Preparation		
Foundation Removal		\$40,000
Utilities/relocation		\$40,000
Utilities/installation		\$15,000
Excavation & Hauling		\$585,000
Earth Retention		\$580,000
Total Site Clearance and Preparation		\$1,260,000
Public Improvements		
Sidewalk Removal		\$12,000
Sidewalks & Curbs		\$30,400
Parkway Trees w/Grates		\$32,000
Alley Repaving		\$24,700
Total Public Improvements		\$99,100
Soft Cost/Fees		
Developer Overhead	2.50%	\$350,000
Architect/Engineer	3.25%	\$465,041
Appraisal		\$5,000
Soil Testing		\$23,300
Market Study		\$7,500
Legal/ Accounting		\$30,000
Insurance	0.25%	\$35,772
Title/Recording/Transfer	0.50%	\$78,878
Commission	5.00%	\$788,783
Building Permit		\$65,000
Mortgage Fees		\$50,000
Construction Interest		\$520,000
Real Estate Taxes		\$13,000
Other Taxes		\$73,118
Soft Cost Contingency	3.00%	\$73,118
Total Soft Costs/Fees		\$2,510,392
Construction Hard Costs		
Construction Costs		\$14,308,950
Hard Cost Contingency	3.00%	\$429,277
Total Construction Hard Costs		\$14,738,227
Deferred Developer Profit		\$1,887,000
Total Project Costs		\$21,546,249

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Sources and Uses of Funds - 3/05/04

SOURCES OF FUNDS

				<u>% of Total Project Costs</u>
Developer Equity	\$1,157,301			5.37%
TIF	\$2,592,699			12.03%
Total Equity	\$3,750,000			
Loans		<u>Rate</u>	<u>Term</u>	
Construction Financing	\$15,909,249	6.50%	2yrs	73.84%
Permanent Financing				
Land Write Down to accomodate Affordable Condominiums	\$0			0.00%
Deferred Developer Profit	\$1,697,000			8.76%
Other _____				
TOTAL SOURCES OF FUNDS	<u>\$21,546,249</u>			100.00%

USES OF FUNDS

Land Acquisition	\$1,051,530
Demolition	\$0
Site Clearance and Preparation	\$1,260,000
Public Improvements	\$99,100
Soft Costs/Fees	\$2,437,274
Soft Cost Contingency	\$73,118
Construction Costs	\$14,308,950
Construction Costs Contingency	\$429,277
Furniture Fbdures & Equipment	\$0
Deferred Developer Profit	\$1,887,000
TOTAL USES OF FUNDS	<u>\$21,546,249</u>

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT D-2

CONSTRUCTION (MBE/WBE) BUDGET

A construction (MBE/WBE) budget is attached to this exhibit cover sheet.

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT D-1

PROJECT BUDGET

A project budget is attached to this exhibit cover sheet.

Property of Cook County Clerk's Office

A handwritten signature in black ink is enclosed within a rectangular box. The signature is highly stylized and illegible. A diagonal watermark reading "Property of Cook County Clerk's Office" is overlaid across the signature and extends from the top-left towards the bottom-right of the page.

UNOFFICIAL COPYAcre Development, LLC
Redevelopment Agreement

Demolition		\$0
Site Preparation		
Foundation Removal		\$40,000
Utilities/relocation		\$40,000
Utilities/installation		\$15,000
Excavation & Hauling		\$585,000
Earth Retention		\$580,000
Total Site Clearance and Preparation		\$1,260,000
Public Improvements		
Sidewalk Removal		\$12,000
Sidewalks & Curbs		\$30,400
Parkway Trees w/Grates		\$32,000
Alley Repaving		\$24,700
Total Public Improvements		\$99,100
Construction Hard Costs		
Construction Costs		\$14,308,950
Hard Cost Contingency	3.00%	\$429,277 (if used)
Total Construction Hard Costs		\$14,738,227
Total Project Costs		\$16,097,327
MBE Value		\$4,024,332
WBE Value		\$804,866

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT E

TIF-FUNDED IMPROVEMENTS

A schedule of TIF - Funded improvements is attached to this exhibit cover sheet.

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Acquisition		\$1,001,530
Alley Vacation		\$50,000
Construction Interest	\$520,000.00	156,000
<u>Site Preparation & Public Improvements</u>		
Civil Engineering	\$38,000.00	
Sidewalk Removal	\$12,000.00	
Sidewalks and Curbs	\$30,400.00	
Sidewalk Trees and Grates	\$32,000.00	
Alley Removal & Repaving	\$24,700.00	
Utility Relocation	\$55,000.00	
Removal of Existing Foundations	\$40,000.00	
Perimeter Shoring (Piles)	\$580,000.00	
Excavation and Soil Hauling	\$585,000.00	
Geotechnical Survey and Testing	\$28,300.00	
Subtotal	\$1,425,400.00	
Engineering & Architectural Services for above activities	\$35,635.00	
Construction Management for above activities	\$49,889.00	
Total Cost for Site Prep. & Public Improvements		\$1,510,924.00
Total TIF Eligible		\$2,718,454

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<u>Project Activities</u>	<u>Estimated Costs</u>	<u>Expenditures Before Closing</u>
Land Acquisition	\$1,001,530	\$0
Alley Vacation	\$50,000	\$0
Demolition	\$0	\$0
Site Preparation		
Foundation Removal	\$40,000	\$0
Utilities Relocation	\$108,545	\$0
Utilities/Installation	\$15,000	\$0
Excavation & Hauling	\$538,455	\$0
Perimeter Shoring (Piles)	\$560,000	\$0
Total Site Clearance and Preparation	<u>\$1,260,000</u>	
Public Improvements		
Sidewalk Removal	\$12,000	\$0
Sidewalks & Curbs	\$30,400	\$0
Parkway Trees w/Grates	\$32,000	\$0
Alley Repaving	\$24,700	\$0
Total Public Improvements	<u>\$99,100</u>	
Soft Cost/Fees		
Developer Overhead	2.50% \$350,000	\$0
Architect/Engineer	3.25% \$65,041	\$0
Appraisal	\$5,000	\$0
Soil Testing	\$20,000	\$0
Market Study	\$7,500	\$0
Legal/Accounting	\$30,000	\$0
Insurance	0.25% \$35,772	\$0
Title/Recording/Transfer	0.50% \$78,878	\$0
Commission	5.00% \$788,783	\$0
Building Permit	\$85,000	\$0
Mortgage Fees	\$50,000	\$0
Construction Interest	\$520,000	\$0
Real Estate Taxes	\$13,000	\$0
Other Taxes		
Soft Cost Contingency	3.00% \$73,118	
Total Soft Costs/Fees	<u>\$2,510,392</u>	
Construction Hard Costs		
Construction Costs	\$14,308,950	\$510,000
Hard Cost Contingency	3.00% \$428,277	\$0
Total Construction Hard Costs	<u>\$14,738,227</u>	
Deferred Developer Profit	\$1,887,000	\$0
Total Project Costs	<u>\$21,546,249</u>	<u>\$510,000</u>

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ACRE DEVELOPMENT, LLC

Redevelopment Agreement
dated as of June 29, 2004

EXHIBIT J

PRELIMINARY TIF PROJECTION - REAL ESTATE TAXES

A schedule of the 1995 Certified EAV values for the PINS comprising the Property is attached to this exhibit cover sheet.

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PINS	1995 Certified EAV's
17-32-227-032-0000	\$166,855.00
17-32-227-033-0000	\$61,528.00
17-32-227-034-0000	\$61,528.00
17-32-227-035-0000	\$64,742.00
17-32-227-036-0000	\$45,120.00
17-32-227-037-0000	\$45,120.00
17-32-227-038-0000	\$46,943.00
17-32-227-039-0000	\$152,875.00
17-32-227-040-0000	\$122,700.00
17-32-227-041-0000	\$75,472.00
17-32-227-042-0000	\$68,991.00
TOTAL	\$911,874.00

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