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Doc#: 0721257099 Fee: \$112.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/31/2007 10:25 AM Pg: 1 of 45

## AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND

7-27  
GIT

(The Above Space For Recorder's Use Only)

This **AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND** ("Agreement") is made on or as of the 24<sup>th</sup> day of July, 2007, by and between the **CITY OF CHICAGO**, an Illinois municipal corporation ("City"), acting by and through its Department of Planning and Development ("DPD"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and **LAKE PARK PARTNERS II, L.L.C.**, an Illinois limited liability company ("Developer"), whose offices are located at 1520 North Sedgwick, Suite 5A, Chicago, Illinois 60610.

### RECITALS

**WHEREAS**, the Developer desires to purchase from the City the real property commonly known as 1227 and 1247 East 46th Street, Chicago, Illinois 60653, which is legally described on Exhibit A attached hereto (the "City Land"); and

**WHEREAS**, the City Land is located in a conservation area known as the North Kenwood-Oakland Conservation Area ("Conservation Area") and consists of two (2) vacant parcels of land designated therein as Disposition Parcel R-101; and

**WHEREAS**, the Developer is the owner of six (6) additional vacant parcels of land located adjacent to the City Land, which are legally described on Exhibit C attached hereto (each, a "Private Lot" and, if more than one, the "Private Lots"); and

**WHEREAS**, the Developer intends to use the City Land and all or part of four (4) Private Lots, identified as the "Project Lots" on Exhibit C and depicted on Exhibit D, to construct two buildings, one with eight (8) units and the other with four (4) units, together with twelve (12) off-street parking spaces (the "Project"), as more fully described on Exhibit B attached hereto; and

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**WHEREAS**, the Project is consistent with the North Kenwood-Oakland Conservation Plan ("Conservation Plan"); and

**WHEREAS**, the Developer intends to use all or part of five (5) Private Lots, identified as the "Adjacent Building Lots" on Exhibit C and depicted on Exhibit D, to construct two additional condominium buildings, one with eight (8) units and the other with three (3) units, together with eleven (11) off-street parking spaces (the "Adjacent Buildings"); and

**WHEREAS**, the Project and the Adjacent Buildings are part of the same development, known as Lake Park Gateway II, and the buildings on the Adjacent Building Lots will conform to the project description in Exhibit B; and

**WHEREAS**, the Developer is purchasing the City Land from the City for less than its fair market value; and

**WHEREAS**, because the sales price of the City Land is less than fair market value, the Developer is required to build two (2) affordable housing units, or pay a fee in lieu of the development of such affordable housing units, in accordance with Chapter 2-44-090 of the Municipal Code of the City, as amended (the "Affordable Housing Ordinance"); and

**WHEREAS**, in order to satisfy the Affordable Housing Ordinance requirements and as additional consideration for the transfer of the City Land, the Developer has agreed to sell one condominium unit in the eight-flat building to be constructed on the City Land and one condominium unit in the eight-flat building to be constructed on the Adjacent Building Lots (each, an "Affordable Unit" and together, the "Affordable Units") for a price not to exceed the Affordable Price (as defined in Exhibit I), excluding any upgrades selected by the unit purchaser, to households whose adjusted annual income at the time of executing a purchase contract for the Affordable Unit does not exceed 100% of the median income for the Chicago Primary Metropolitan Statistical Area (each such household, a "Qualified Household" and together, the "Qualified Households"); and

**WHEREAS**, the City Council, pursuant to an ordinance adopted on March 29, 2006, and published at pages 73505 through 73542 in the Journal of the Proceedings of the City Council of such date, authorized the sale of the City Land to the Developer, subject to the execution, delivery and recording of this Agreement; and

**WHEREAS**, the Developer and the City acknowledge that the implementation of the policies and provisions described in this Agreement will be of mutual benefit to the Developer and the City.

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

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## SECTION 1. INCORPORATION OF RECITALS.

The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

## SECTION 2. PURCHASE PRICE.

The City hereby agrees to sell, and the Developer hereby agrees to purchase, upon and subject to the terms and conditions of this Agreement, the City Land, for the sum of Seventy Thousand and 00/100 Dollars (\$70,000) ("Purchase Price"), to be paid to the City at the Closing (as defined in Section 4) in cash or by certified or cashier's check or wire transfer of immediately available funds, less the Earnest Money (as defined in Section 3.1). Except as specifically provided herein to the contrary, the Developer shall pay all escrow fees and other title insurance fees and closing costs. The Developer acknowledges that the Purchase Price is approximately \$70,000 less than the fair market value of the City Land and that the City has only agreed to sell the City Land to the Developer for the Purchase Price because the Developer has agreed to execute this Agreement and comply with its terms and conditions, including, without limitation, Section 14. The Developer acknowledges that upon the recording of this Agreement, the City shall have a lien against the City Land (the "In Lieu Fee Lien") in an amount equal to the payment of fees in lieu of creating the Affordable Units (the "In Lieu Fee Lien Amount"), in accordance with Section 2-44-090(i)(1) of the Affordable Housing Ordinance. The In Lieu Fee Lien Amount shall not amortize, but shall be an amount immediately due and payable to the City if the Developer fails to sell the Affordable Units to Qualified Households at Affordable Prices. The In Lieu Fee Lien, as evidenced by this Agreement, shall be released upon the sale of the Affordable Units as expressly contemplated and permitted under this Agreement. The In Lieu Fee Lien shall be junior to the lien of any construction loan mortgage approved pursuant to Section 9.2.

## SECTION 3. EARNEST MONEY AND PERFORMANCE DEPOSIT.

3.1 Earnest Money. Upon the execution of this Agreement by the Developer, the Developer shall deposit with the City the amount of Three Thousand Five Hundred and 00/100 Dollars (\$3,500) ("Earnest Money"), which shall be credited against the Purchase Price at the Closing (as defined in Section 4 below).

3.2 Performance Deposit. Upon the execution of this Agreement by the Developer, the Developer shall deposit with the City the amount of Three Thousand Five Hundred and 00/100 Dollars (\$3,500), as security for the performance of its obligations under this Agreement ("Performance Deposit"), which the City will retain until the City issues the last Partial Certificate of Completion (as defined in Section 13).

3.3 Interest. The City will pay no interest to the Developer on the Earnest Money or Performance Deposit.

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## SECTION 4. CLOSING.

The closing of the transaction contemplated by this Agreement ("Closing") shall take place at the downtown offices of Greater Illinois Title Company ("Title Company"), 120 North LaSalle Street, Suite 900, Chicago, Illinois 60602, within thirty (30) days after the Developer has satisfied all conditions precedent set forth in Section 9, unless DPD, in its sole discretion, waives such conditions, or on such date as the parties mutually agree upon in writing (the "Closing Date"); provided, however, in no event shall the Closing occur any later than August 1, 2007 (the "Outside Closing Date"), unless DPD, in its sole discretion, extends the Outside Closing Date. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement.

## SECTION 5. CONVEYANCE OF TITLE.

5.1 Form of Deed. The City shall convey the City Land to the Developer by quitclaim deed ("Deed"), subject to the terms of this Agreement and the following (collectively, the "Permitted Exceptions"):

- (a) the Conservation Plan for the Conservation Area;
- (b) the standard exceptions in an ALTA title insurance policy;
- (c) general real estate taxes and any special assessments or other taxes that are not yet due and owing;
- (d) all easements, encroachments, covenants and restrictions of record and not shown of record that will not adversely affect the use and insurability of the City Land for the development of the Project; and
- (e) such other title defects as may exist that will not adversely affect the use and insurability of the City Land for the development of the Project; and
- (f) any and all exceptions caused by the acts of the Developer or its agents.

5.2 Recording Costs. The Developer shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the City Land to the Developer.

## SECTION 6. TITLE AND SURVEY.

6.1 The Developer acknowledges that the City has delivered to the Developer two (2) title insurance commitments for the City Land (Order No. 8276202 from Chicago Title Insurance Company for PIN No. 20-02-403-004-0000 with an effective date of April 14, 2005, and Order No. 4361365 from the Title Company for PIN No. 20-02-403-014 with an effective date of September 22, 2005) (together, the "Title Commitments"), showing the City in title to the City Land. The Developer shall be solely responsible for and shall pay all costs associated with

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updating the Title Commitments (including all search, continuation and later-date fees), and obtaining any title insurance, extended coverage or other endorsements it deems necessary. The Developer shall also be solely responsible for and shall pay all costs associated with obtaining any survey it deems necessary.

6.2 The City shall use reasonable efforts to obtain the waiver or release of any delinquent real estate tax liens on the City Land prior to the Closing, to the extent such tax liens can be waived or released through submission of an abatement letter to the Cook County Treasurer or a motion to vacate a tax sale. If the City is unable to obtain the waiver or release of any such tax liens or is unable to cause the Title Company to insure over such tax liens, or if the City Land is encumbered with any other unpermitted exceptions, the Developer shall have the option to do one of the following: (a) accept title to the City Land subject to the exceptions, which shall then become Permitted Exceptions, without reduction in the Purchase Price; or (b) terminate this Agreement by delivery of written notice to the City at least fourteen (14) days prior to the Closing Date, in which event the City shall return the Earnest Money and Performance Deposit to the Developer, this Agreement shall be null and void and, except as otherwise specifically provided herein, neither party shall have any further right, duty or obligation hereunder. If the Developer elects not to terminate this Agreement as aforesaid, the Developer agrees to accept title subject to the unpermitted exceptions. The Developer shall be responsible for all taxes accruing after the Closing.

## **SECTION 7. BUILDING PERMITS AND OTHER GOVERNMENTAL APPROVALS.**

The Developer shall apply for all necessary building permits and other required permits and approvals for the construction of the Project no later than fourteen (14) days after the City Council authorizes the sale of the City Land, unless DPD, in its sole discretion, extends such application date, and shall pursue such permits and approvals in good faith and with all due diligence.

## **SECTION 8. PROJECT BUDGET AND PROOF OF FINANCING.**

The total budget for the Project as of December 2005 was estimated to be Two Million Five Hundred Eight Thousand and Three Dollars (\$2,508,003) (the "Preliminary Project Budget"). Not less than fourteen (14) days prior to the Closing Date, the Developer shall submit to DPD for approval a final project budget materially consistent with the Preliminary Project Budget ("Budget") and evidence of funds adequate to finance the purchase of the City Land and the construction of the Project ("Proof of Financing"). The Proof of Financing shall include binding commitment letters from the Developer's lenders, if any, and evidence of the Developer's ability to make an equity contribution in the amount of any gap in financing.

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## SECTION 9. CONDITIONS TO THE CITY'S OBLIGATION TO CLOSE.

The obligations of the City under this Agreement are contingent upon each of the following:

9.1 Final Governmental Approvals. At least fourteen (14) days prior to the Closing Date, the Developer shall have delivered to the City evidence of all building permits and other final governmental approvals necessary to construct the building to be located at 1227 East 46th Street.

9.2 Budget and Proof of Financing. At least fourteen (14) days prior to the Closing Date, the City shall have approved the Developer's Budget and Proof of Financing.

9.3 Insurance. At least fourteen (14) days prior to the Closing Date, the Developer shall have delivered to the City evidence of insurance reasonably acceptable to the City. The City shall be named as an additional insured on all liability insurance policies and as a loss payee (subject to the prior rights of any first mortgagee) on all property insurance policies from the Closing Date through the date the City issues the last Partial Certificate of Completion (as defined in Section 13 below). With respect to property insurance, the City will accept an ACORD 28 form. With respect to liability insurance, the City will accept an ACORD 25 form, together with a copy of the endorsement that is added to the Developer's policy showing the City as an additional insured.

9.4 Legal Opinion. At least fourteen (14) days prior to the Closing Date, the Developer shall have delivered to the City a legal opinion in substantially the form attached hereto as Exhibit E.

9.5 Due Diligence. At least fourteen (14) days prior to the Closing Date, the Developer shall have delivered to the City due diligence searches in its name (UCC liens, state and federal tax liens, pending suits and judgments in Cook County and the U.S. District Court for the Northern District of Illinois, and bankruptcy), showing no unacceptable liens, litigation, judgments or filings, as reasonably determined by the Corporation Counsel.

9.6 Organization and Authority Documents. At least fourteen (14) days prior to the Closing Date, the Developer shall have delivered to DPD the articles of organization, including all amendments thereto, of the Developer, as furnished and certified by the Illinois Secretary of State; the operating agreement of the Developer, as certified by the managing member of the Developer; resolutions authorizing the Developer to enter into this transaction; a Certificate of Good Standing dated no more than thirty (30) days prior to the Closing Date; and such other corporate authority and organizational documents as the City may reasonably request.

9.7 Subordination Agreement. On the Closing Date, and prior to recording any mortgage approved pursuant to Section 9.2, the Developer shall deliver to the City a subordination agreement substantially in the form attached hereto as Exhibit F ("Subordination Agreement").

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9.8 MBE/WBE and City Residency Hiring Compliance Plan. At least fourteen (14) days prior to the Closing Date, the Developer and the Developer's general contractor and all major subcontractors shall meet with staff from the Department of Housing ("DOH") regarding compliance with the MBE/WBE, city residency hiring, prevailing wage and other requirements set forth in Section 23, and at least seven (7) days prior to the Closing Date, the City shall have approved the Developer's compliance plan in accordance with Section 23.4.

9.9 Representations and Warranties. On the Closing Date, each of the representations and warranties of the Developer in Section 24 and elsewhere in this Agreement shall be true and correct.

9.10 Other Obligations. On the Closing Date, the Developer shall have performed all of the other obligations required to be performed by the Developer under this Agreement as and when required under this Agreement.

If any of the conditions in this Section 9 have not been satisfied to the City's reasonable satisfaction within the time periods provided for herein, the City may, at its option, terminate this Agreement by delivery of written notice to the Developer at any time after the expiration of the applicable time period, in which event this Agreement shall be null and void and, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder. Any forbearance by the City in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

## SECTION 10. CONSTRUCTION REQUIREMENTS.

10.1 Site Plans. The Developer shall construct the Project on the City Land and the Project Lots, and the Affordable Unit in the eight-flat building on the Adjacent Building Lots, in accordance with the final plans and drawings prepared by Atelier' 7 dated February 1, 2006, which have been approved by DPD and which are incorporated herein by reference ("Drawings"). No material deviation from the Drawings may be made without the prior written approval of DPD. If the Developer submits and DPD approves revised site plans or architectural drawings after the date of this Agreement, the term "Drawings" as used herein shall refer to the revised site plans and architectural drawings upon DPD's written approval of the same.

10.2 Relocation of Utilities, Curb Cuts and Driveways. The Developer shall be solely responsible for and shall pay all costs associated with: (a) the relocation, installation or construction of public or private utilities, curb cuts and driveways; (b) the repair or reconstruction of any curbs, vaults, sidewalks or parkways required in connection with or damaged as a result of the Developer's construction of the Project; (c) the removal of existing pipes, utility equipment or building foundations; and (d) the termination of existing water or other services. The City shall have the right to approve any streetscaping provided by the Developer as part of the Project, including, without limitation, any paving of sidewalks, landscaping and lighting.

10.3 City's Right to Inspect City Land and Project Lots. For the period commencing on the Closing Date and continuing through the date the City issues the last Partial Certificate of

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Completion, any duly authorized representative of the City shall have access to the City Land and the Project Lots at all reasonable times for the purpose of determining whether the Developer is constructing the Project in accordance with the terms of this Agreement and all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal (collectively, "Laws").

10.4 Barricades and Signs. Promptly after the execution of this Agreement, the Developer shall, at its sole cost and expense, erect and maintain such signs as the City may reasonably require identifying the City Land as a City redevelopment project. Prior to the commencement of any construction activity requiring barricades, the Developer shall install barricades of a type and appearance satisfactory to the City and constructed in compliance with all applicable Laws. DPD shall have the right to approve the maintenance, appearance, color scheme, painting, name, type, content and design of all barricades, which approval shall not be unreasonably withheld or delayed. The Developer shall erect all signs and barricades so as not to interfere with or affect any bus stop or train station in the vicinity of the City Land.

## SECTION 11. LIMITED APPLICABILITY.

Any approval given by DPD pursuant to this Agreement is for the purpose of this Agreement only and does not constitute the approval required by the City's Department of Construction and Permits ("DCAP") or any other City department; nor does such approval constitute an approval of the quality, structural soundness or safety of any improvements located or to be located on the City Land or Project Lots, or the compliance of said improvements with any Laws, private covenants, restrictions of record, or any agreement affecting the City Land or Project Lots or any part thereof.

## SECTION 12. COMMENCEMENT AND COMPLETION OF PROJECT.

The Developer shall commence construction of the Project no later than August 31, 2007, and shall complete the Project (as evidenced by the issuance of the last Partial Certificate of Completion) no later than August 31, 2009; provided, however, DPD, in its sole discretion, may extend the construction commencement and completion dates. The Developer shall give written notice to the City within five (5) days after it commences construction. The Developer shall construct the Project in accordance with the Drawings and all Laws and covenants and restrictions of record.

## SECTION 13. PARTIAL CERTIFICATES OF COMPLETION.

Upon completion of each of the condominium units comprising the Project and the Affordable Unit in the eight-flat building on the Adjacent Building Lots, the Developer shall deliver to the City a notice of closing ("Notice of Closing") in substantially the form attached hereto as Exhibit G. The Notice of Closing must include a Certificate of Substantial Completion from the project architect in substantially the form attached hereto as Exhibit H. Within forty-five (45) days after receipt of a Notice of Closing and the accompanying Certificate of Substantial Completion, the City shall inspect the subject unit to determine whether it is



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substantially complete (i.e., complete except for punch list items) and constructed in accordance with this Agreement, and shall thereafter deliver to the Developer either a Partial Certificate of Completion for the unit ("Partial Certificate of Completion") or a written statement indicating in adequate detail how the Developer has failed to complete the unit in compliance with this Agreement or is otherwise in default, and what measures or acts are necessary, in the sole opinion of the City, for the Developer to take or perform in order to obtain the Partial Certificate of Completion. If the City requires additional measures or acts to assure compliance, the Developer shall have thirty (30) days to correct any deficiencies and resubmit a Notice of Closing. The Partial Certificate of Completion shall be in recordable form, and shall, upon recording, constitute a conclusive determination of satisfaction and termination of the covenants in this Agreement and the applicable Deed with respect to the Developer's obligations to construct any single dwelling unit. The Partial Certificate of Completion shall not, however, constitute evidence that the Developer has complied with any Laws relating to the construction of the subject unit, nor shall it serve as any guaranty as to the quality of the construction. Upon (a) recordation of a Partial Certificate of Completion for each of the condominium units in the Project, (b) recordation of a Partial Certificate of Completion for the Affordable Unit in the eight-flat building on the Adjacent Building Lots, and (c) the sale of both Affordable Units to Qualified Households in accordance with Section 14.3 hereof, the City shall return the Performance Deposit to the Developer.

## SECTION 14. RESTRICTIONS ON USE.

The Developer agrees that it:

14.1 Shall devote the City Land to a use that complies with the Conservation Plan until the Conservation Plan expires.

14.2 Shall not discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the sale, lease, rental, use or occupancy of the City Land or the Project or any part thereof.

14.3 Shall develop and sell the Affordable Units in accordance with the following provisions:

(a) The Affordable Unit in the eight-flat building on the City Land and the Affordable Unit in the eight-flat building on the Adjacent Building Lots shall be similar in construction, design and appearance to each other and to the market rate units in the Project.

(b) The Developer shall sell each Affordable Unit for a price not to exceed the Affordable Price (as defined in Exhibit I), excluding any upgrades selected by the unit purchaser.

(c) The Developer shall sell each Affordable Unit to a Qualified Household.

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(d) The City must approve the income eligibility of the purchaser of each Affordable Unit to confirm that the purchaser is a Qualified Household. Toward this end, the Developer shall deliver to DOH any information required by DOH in order to determine the purchaser's income eligibility. DOH shall have ten (10) business days from the date of receipt of a "complete information package" to qualify purchasers. A "complete information package" shall include, by means of illustration and not limitation, the fully-executed real estate sales contract, the W-2 forms from the purchaser's employers, U.S. 1040 income tax returns from the previous two (2) years, an affidavit or verification from the purchaser with regard to household size, and the employer verification form utilized by the Federal National Mortgage Association (or Fannie Mae).

(e) At the closing of each Affordable Unit, the Developer shall require the buyer of each Affordable Unit to execute an Affidavit in substantially the form attached hereto as Exhibit J and the City's then-current form of Mortgage, Security and Recapture Agreement, Including Residency, Transfer, Financing and Affordability Covenants ("Mortgage") for affordable housing units created pursuant to the Affordable Housing Ordinance, securing the difference between the market rate sales price for a similar type of unit and the sales price for the Affordable Unit, plus simple, non-compounding interest on such amount at the rate of three percent (3.0%) per annum (the "Recapture Amount"), in favor of the City. The current form of Mortgage has a term of thirty (30) years ("Mortgage Term"), and imposes certain residency, transfer, financing and affordability covenants (the "Affordability Covenants"). The Affordability Covenants provide, among other things, that the Affordable Unit may be sold only to a Qualified Household for an Affordable Price, and that the mortgagor may not refinance its first mortgage in an amount greater than the Affordable Price or obtain home equity or other financing secured by the Affordable Unit which, when added to the then-outstanding balance of such first mortgage, exceeds the Affordable Price. The current form of Mortgage allows the City to bring an action for specific enforcement or accept payment of the Recapture Amount in the event the mortgagor violates the Affordability Covenants, and gives the City the option, in its sole discretion, to waive or modify the Affordability Covenants upon a showing of undue hardship or changed circumstances that would make the enforcement of such covenants inequitable or impractical. The Mortgage shall be subordinate to the lien in favor of the permanent lender, if any. The Developer acknowledges receipt of a copy of the City's current form of Mortgage for affordable housing units created pursuant to the Affordable Housing Ordinance.

The Developer acknowledges and agrees that the use and affordability restrictions set forth in this Section 14 constitute material, bargained-for consideration for the City and are intended to further the public policy of creating long-term affordable housing, and that, but for such use and affordability restrictions, the City would not have agreed to convey the City Land to the Developer.

## **SECTION 15. PROHIBITION AGAINST SALE OR TRANSFER OF CITY LAND.**

Prior to the issuance of the last Partial Certificate of Completion for the Project, the Developer may not, without the prior written consent of DPD, which consent shall be in DPD's

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sole discretion: (a) directly or indirectly sell, transfer or otherwise dispose of the City Land or any part thereof or any interest therein or the Developer's controlling interests therein (including without limitation, a transfer by assignment of any beneficial interest under a land trust); or (b) directly or indirectly assign this Agreement. The Developer acknowledges and agrees that DPD may withhold its consent under (a) or (b) above if, among other reasons, the proposed purchaser, transferee or assignee (or such entity's principal officers or directors) is in violation of any Laws, or if the Developer fails to submit sufficient evidence of the financial responsibility, business background and reputation of the proposed purchaser, transferee or assignee. If the Developer is a business entity, no principal party of the Developer (e.g., a general partner, member, manager or shareholder) may sell, transfer or assign any of its interest in the entity prior to the issuance of the last Partial Certificate of Completion to anyone other than another principal party, without the prior written consent of DPD, which consent shall be in DPD's sole discretion. The Developer must disclose the identity of all limited partners to the City at the time such limited partners obtain an interest in the Developer. The provisions of this Section 15 shall not prohibit the Developer from contracting to sell or from selling individual condominium units in the ordinary course of development, nor shall it prohibit the Developer from transferring the Project to one or more condominium associations in compliance with the Illinois Condominium Property Act.

## **SECTION 16. LIMITATION UPON ENCUMBRANCE OF CITY LAND.**

Prior to the issuance of the last Partial Certificate of Completion for the Project, the Developer shall not, without DPD's prior written consent, which shall be in DPD's sole discretion, engage in any financing or other transaction which would create an encumbrance or lien on the City Land, except for the acquisition and construction financing approved pursuant to Section 9.2 hereof, and recorded documents necessary to convert the City Land, where applicable, to a condominium form of ownership.

## **SECTION 17. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.**

Notwithstanding any other provision of this Agreement or of the Deed, the holder of any mortgage authorized by this Agreement (or any affiliate of such holder) shall not itself be obligated to construct or complete the Project, or to guarantee such construction or completion, but shall be bound by the other covenants running with the land specified in Section 18 and, at Closing, shall execute a Subordination Agreement (as defined in Section 9.7). If any such mortgagee or its affiliate succeeds to the Developer's interest in the City Land prior to the issuance of the last Partial Certificate of Completion, whether by foreclosure, deed-in-lieu of foreclosure or otherwise, and thereafter transfers its interest in the City Land to another party, such transferee shall be obligated to complete the Project, and shall also be bound by the other covenants running with the land specified in Section 18.

## **SECTION 18. COVENANTS RUNNING WITH THE LAND.**

The parties agree, and the Deed shall so expressly provide, that the covenants provided in Section 12 (Commencement and Completion of Project), Section 14 (Restrictions on Use), Section 15 (Prohibition Against Transfer of City Land) and Section 16 (Limitation Upon

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Encumbrance of City Land) will be covenants running with the land, binding on the Developer and its successors and assigns (subject to the limitation set forth in Section 17 above as to any permitted mortgagee) to the fullest extent permitted by law and equity for the benefit and in favor of the City, and shall be enforceable by the City. The covenants provided in Sections 12, 15 and 16 shall terminate upon the issuance of the last Partial Certificate of Completion for the Project. The covenant contained in Section 14.1 shall terminate on the date the Conservation Plan expires. The covenant contained in Section 14.2 shall terminate upon the sale of the last condominium unit in the Project. The covenants contained in Section 14.3 shall terminate upon the sale of the last Affordable Unit, so long as the purchaser of each Affordable Unit is a Qualified Household and has executed and recorded a Mortgage in accordance with Section 14.3(e).

## SECTION 19. PERFORMANCE AND BREACH.

19.1 Time of the Essence. Time is of the essence in the Developer's performance of its obligations under this Agreement.

19.2 Permitted Delays. The Developer shall not be considered in breach of its obligations under this Agreement in the event of a delay due to unforeseeable causes beyond the Developer's control and without the Developer's fault or negligence, including, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of subcontractors due to such causes. The time for the performance of the obligations shall be extended only for the period of the delay and only if the Developer requests an extension in writing within twenty (20) days after the beginning of any such delay.

19.3 Cure. If the Developer defaults in the performance of its obligations under this Agreement, the Developer shall have sixty (60) days after written notice of default from the City to cure the default, or such longer period as shall be reasonably necessary to cure such default provided the Developer promptly commences such cure and thereafter diligently pursues such cure to completion (so long as continuation of the default does not create material risk to the Project or to persons using the Project). Notwithstanding the foregoing, no notice or cure period shall apply to defaults under Sections 19.4(c), (e) and (g), and no notice shall be required for a default under Section 19.4(h).

19.4 Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Agreement:

(a) The Developer makes or furnishes a warranty, representation, statement or certification to the City (whether in this Agreement, an Economic Disclosure Statement, or another document) that is not true and correct.

(b) A petition is filed by or against the Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereafter existing, which is not vacated, stayed or set aside within thirty (30) days after filing.

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(c) The Developer fails to complete the Project in accordance with the time line outlined in Section 12 above, or the Developer abandons or substantially suspends construction of the Project.

(d) The Developer fails to pay real estate taxes or assessments affecting the City Land or any part thereof when due, or places thereon any encumbrance or lien unauthorized by this Agreement, or suffers or permits any levy or attachment, mechanic's, laborer's, material supplier's, or any other lien or encumbrance unauthorized by this Agreement to attach to the City Land unless bonded or insured over.

(e) The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement.

(f) There is a material and adverse change in the Developer's financial condition or operations.

(g) The Developer fails to construct the Affordable Units, or fails to convey the Affordable Units in accordance with Section 14.3.

(h) The Developer fails to close by the Outside Closing Date, unless DPD, in its sole discretion, extends the Outside Closing Date.

(i) The Developer fails to perform, keep or observe any of the other covenants, conditions, promises, agreements or obligations under this Agreement or any other written agreement entered into with the City with respect to the Project.

19.5 Prior to Closing. If an Event of Default occurs prior to the Closing, and the default is not cured in the time period provided for in Section 19.3 above, the City may terminate this Agreement, institute any action or proceeding at law or in equity against the Developer, or retain the Earnest Money and Performance Deposit as liquidated damages.

19.6 After Closing. If an Event of Default occurs after the Closing but prior to the issuance of the Certificate of Completion, and the default is not cured in the time period provided for in Section 19.3 above, the City may terminate this Agreement and exercise any and all remedies available to it at law or in equity, including, without limitation, the right to re-enter and take possession of the City Land, terminate the estate conveyed to the Developer, and revert title to the City Land in the City (the "Right of Reverter"); provided, however, the City's Right of Reverter shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement.

19.7 Resale of the City Land. Upon the re-vesting in the City of title to the City Land as provided in Section 19.6, the City may complete the Project or convey the City Land, subject to any first mortgage lien, to a qualified and financially responsible party reasonably acceptable to the first mortgagee, who shall assume the obligation of completing the Project or such other improvements as shall be satisfactory to DPD, and otherwise comply with the covenants that run with the land as specified in Section 18.

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19.8 Disposition of Resale Proceeds. If the City sells the City Land as provided for in Section 19.7, the net proceeds from the sale, after payment of all amounts owed under any mortgage liens authorized by this Agreement in order of lien priority, shall be utilized to reimburse the City for:

(a) costs and expenses incurred by the City (including, without limitation, salaries of personnel) in connection with the recapture, management and resale of the City Land (less any income derived by the City from the City Land in connection with such management); and

(b) all unpaid taxes, assessments, and water and sewer charges assessed against the City Land; and

(c) any payments made (including, without limitation, reasonable attorneys' fees and court costs) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; and

(d) any expenditures made or obligations incurred with respect to construction or maintenance of the Project; and

(e) any other amounts owed to the City by the Developer.

The Developer shall be entitled to receive any remaining proceeds up to the amount of the Developer's equity investment in the City Land.

19.9 No Remedies Against Housing Units or Purchasers. Notwithstanding anything in this Section 19 or otherwise, the City shall have no rights or remedies against a purchaser of a condominium unit, or against such unit, after the sale of such unit to such purchaser. By operation of this Section 19.9, each such condominium unit shall be released from the encumbrance of this Agreement at the time of such unit's sale to a bona fide purchaser.

## **SECTION 20. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.**

The Developer represents and warrants that no agent, official or employee of the City shall have any personal interest, direct or indirect, in the Developer, this Agreement, the City Land or the Project, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, association or other entity in which he or she is directly or indirectly interested. No agent, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or with respect to any commitment or obligation of the City under the terms of this Agreement.

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## SECTION 21. INDEMNIFICATION.

The Developer agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with: (a) the failure of the Developer to perform its obligations under this Agreement; (b) the failure of the Developer or any contractor or other agent, entity or individual acting under the control or at the request of the Developer ("Agent") to pay contractors, subcontractors or material suppliers in connection with the construction and management of the Project; (c) any misrepresentation or omission made by the Developer or any Agent; (d) the failure of the Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (e) any activity undertaken by the Developer or any Agent on the City Land prior to or after the Closing. This indemnification shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

## SECTION 22. INSPECTION; CONDITION OF CITY LAND AT CLOSING.

22.1 "As Is" Sale. The City makes no covenant, representation or warranty, express or implied, of any kind, as to the structural, physical or environmental condition of the City Land or the suitability of the City Land for any purpose whatsoever, and the Developer agrees to accept the City Land in its "as is," "where is" and "with all faults" condition.

### 22.2 Right of Entry.

(a) The Developer's obligations hereunder are conditioned upon the Developer being satisfied with the condition of the City Land for the construction, development and operation of the Project. Upon the Developer's request, the City shall grant the Developer the right, at its sole cost and expense, to enter the City Land for a period of thirty (30) days (the "Inspection Period") pursuant to a Right of Entry Agreement in form and substance reasonably acceptable to the City to inspect the same, perform surveys, environmental assessments, soil and any other due diligence it deems necessary or desirable to satisfy itself as to the condition of the City Land.

(b) If the Developer determines that it is not satisfied, in its sole discretion, with the condition of the City Land, the Developer may terminate this Agreement by written notice to the City within thirty (30) days after the expiration of the Inspection Period, whereupon the City shall return the Earnest Money and Performance Deposit to the Developer and this Agreement shall be null and void and, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder. If the Developer elects not to terminate this Agreement pursuant to this Section 22.2, the Developer shall be deemed satisfied with the condition of the City Land.

22.3 Indemnity. The Developer hereby waives and releases, and indemnifies the City from and against, any claims and liabilities relating to or arising from the structural, physical or

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environmental condition of the City Land, including, without limitation, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), and shall undertake and discharge all liabilities of the City arising from any structural, physical or environmental condition that existed on the City Land prior to the Closing, including, without limitation, liabilities arising under CERCLA. The Developer hereby acknowledges that, in purchasing the City Land, the Developer is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or its agents or employees with respect thereto. The Developer shall perform such studies and investigations, conduct such tests and surveys, and engage such specialists as the Developer deems appropriate to evaluate fairly the structural, physical and environmental condition and risks of the City Land. If, after the Closing, the structural, physical and environmental condition of the City Land is not in all respects entirely suitable for its intended use, it shall be the Developer’s sole responsibility and obligation to take such action as is necessary to put the City Land in a condition which is suitable for its intended use. The provisions of this Section 22.3 shall survive the Closing.

## **SECTION 23. DEVELOPER’S EMPLOYMENT OBLIGATIONS.**

23.1 Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors and any affiliate of the Developer operating on the City Land (collectively, the “Employers” and individually, an “Employer”) to agree, that with respect to the provision of services in connection with the construction of the Project or occupation of the City Land:

(a) Neither the Developer nor any 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, Section 2-160-010 et seq. of the Municipal Code of Chicago, as amended from time to time (the “Human Rights Ordinance”). The Developer and each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon the foregoing grounds, 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. The Developer and 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 Developer and each Employer, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon the foregoing grounds.

(b) To the greatest extent feasible, the Developer and each Employer shall present opportunities for training and employment of low and moderate income residents



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of the City, and provide that contracts for work in connection with the construction of the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in, the City.

(c) The Developer and each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including, without limitation, the Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), both as amended from time to time, and any regulations promulgated thereunder.

(d) The Developer, in order to demonstrate compliance with the terms of this Section 23.1, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

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

(f) Failure to comply with the employment obligations described in this Section 23.1 shall be a basis for the City to pursue remedies under the provisions of Section 19.

## 23.2 City Resident Employment Requirement

(a) The Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Project, the Developer and each Employer shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent); provided, however, that in addition to complying with this percentage, the Developer and each Employer shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

(b) The Developer and the Employers 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 of Chicago.

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

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(d) The Developer and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the construction of the Project. The Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

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

(f) The Developer and the Employers shall provide full access to their employment records to the chief procurement officer, DOH, the Superintendent of the Chicago Police Department, the inspector general, or any duly authorized representative thereof. The Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years after the issuance of the Certificate of Completion.

(g) At the direction of DOH, the Developer and the Employers shall provide affidavits and other supporting documentation 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 the Developer and the Employers to provide work for 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) shall not suffice to replace the actual, verified achievement of the requirements of this Section 23.2 concerning the worker hours performed by actual Chicago residents.

(i) If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section 23.2 concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section 23.2. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 19.3, the parties agree that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in the Budget shall be surrendered by the Developer and for the Employers to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer and/or the other Employers or employees to prosecution.

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

(k) The Developer shall cause or require the provisions of this Section 23.2 to be included in all construction contracts and subcontracts related to the construction of the Project.

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

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 23.3, during the course of construction of the Project, at least 24% of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses and at least 4% of the aggregate hard construction costs shall be expended for contract participation by women-owned businesses.

(b) For purposes of this Section 23.3 only:

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

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

(iii) The term "women-owned business" or "WBE" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned

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business enterprise, related to the Procurement Program or the Construction Program, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture, or (ii) the amount of any actual work performed on the Project by the MBE or WBE); by the Developer utilizing a MBE or a WBE as the general contractor (but only to the extent of any actual work performed on the Project by the general contractor); by subcontracting or causing the general contractor to subcontract a portion of the construction of the Project to one or more MBEs or WBEs; by the purchase of materials or services used in the construction of the Project from one or more MBEs or WBEs; or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 23.3. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE general contractor or subcontractor without the prior written approval of DOH.

(d) The Developer shall deliver quarterly reports to the City's monitoring staff during the construction of the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, *inter alia*, the name and business address of each MBE and WBE solicited by the Developer or the general contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the construction of the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the construction of the Project for at least five (5) years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on prior notice of at least five (5) business days, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the construction of the Project.

(e) Upon the disqualification of any MBE or WBE general contractor or subcontractor, if the disqualified party misrepresented such status, the Developer shall be obligated to discharge or cause to be discharged the disqualified general contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

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(f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 23.3 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

**23.4 Pre-Construction Conference and Post-Closing Compliance Requirements.** Not less than fourteen (14) days prior to the Closing Date, the Developer and the Developer's general contractor and all major subcontractors shall meet with DOH monitoring staff regarding compliance with all Section 23 requirements. During this pre-construction meeting, the Developer shall present its plan to achieve its obligations under this Section 23, the sufficiency of which the City's monitoring staff shall approve as a precondition to the Closing. During the construction of the Project, the Developer shall submit all documentation required by this Section 23 to the City's monitoring staff, including, without limitation, the following: (a) subcontractor's activity report; (b) contractor's certification concerning labor standards and prevailing wage requirements; (c) contractor letter of understanding; (d) monthly utilization report; (e) authorization for payroll agent; (f) certified payroll; (g) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (h) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer is not complying with its obligations under this Section 23, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (x) issue a written demand to the Developer to halt construction of the Project, (y) withhold any further payment of any City funds to the Developer or the general contractor, or (z) seek any other remedies against the Developer available at law or in equity.

## **SECTION 24. REPRESENTATIONS AND WARRANTIES.**

**24.1 Representations and Warranties of the Developer.** To induce the City to execute this Agreement and perform its obligations hereunder, the Developer hereby represents and warrants to the City that as of the date of this Agreement and as of the Closing Date the following shall be true and correct in all respects:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois with full power and authority to acquire, own and redevelop the City Land, and the person signing this Agreement on behalf of the Developer has the authority to do so.

(b) All certifications and statements contained in the Economic Disclosure Statement last submitted to the City by the Developer (and any legal entity holding an interest in the Developer) are true, accurate and complete.

(c) The Developer's execution, delivery and performance of this Agreement and all instruments and agreements contemplated hereby will not, upon the giving of notice or lapse of time, or both, result in a breach or violation of, or constitute a default under, any other agreement to which the Developer, or any party affiliated with the Developer, is a party or by which the Developer or the City Land is bound.

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(d) To the best of the Developer's knowledge, no action, litigation, investigation or proceeding of any kind is pending or threatened against the Developer, or any party affiliated with the Developer, and the Developer knows of no facts which could give rise to any such action, litigation, investigation or proceeding, which could: (i) affect the ability of the Developer to perform its obligations hereunder; or (ii) materially affect the operation or financial condition of the Developer.

(e) To the best of the Developer's knowledge, the Project will not violate: (i) any Laws, including, without limitation, any zoning and building codes and environmental regulations; or (ii) any building permit, restriction of record or other agreement affecting the City Land or Project Lots.

24.2 Representations and Warranties of the City. To induce the Developer to execute this Agreement and perform its obligations hereunder, the City hereby represents and warrants to the Developer that the City has authority under its home rule powers to execute and deliver this Agreement and perform the terms and obligations contained herein.

24.3 Survival of Representations and Warranties. Each of the parties agrees that all of its representations and warranties set forth in this Section 24 or elsewhere in this Agreement are true as of the date of this Agreement and will be true in all material respects at all times thereafter, except with respect to matters which have been disclosed in writing and approved by the other party.

## SECTION 25. NOTICES.

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) facsimile; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

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

With a copy to:

City of Chicago  
Department of Law  
121 North LaSalle Street, Suite 610  
Chicago, Illinois 60602  
Attn: Real Estate and Land Use Division

If to the Developer:

Lake Park Partners II, L.L.C.  
1520 North Sedgwick, Suite 5A  
Chicago, Illinois 60610  
Attn: Mitchell Newman

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With a copy to:

Joanne F. Hurley  
 Kelly, Olson, Michod, DeHaan & Richter, L.L.C.  
 30 S. Wacker Drive, Suite 2300  
 Chicago, IL 60606

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon confirmed transmission by facsimile, respectively, provided that such facsimile transmission is confirmed as having occurred prior to 5:00 p.m. on a business day. If such transmission occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 25 shall constitute delivery.

## SECTION 26. BUSINESS RELATIONSHIPS.

The Developer acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) 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 City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

## SECTION 27. PATRIOT ACT CERTIFICATION.

The Developer represents and warrants that neither the Developer nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. As used in this Section 27, an "Affiliate" shall be deemed to be a person or entity related to the Developer that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Developer, and a person or entity shall be

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deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

## **SECTION 28. PROHIBITION ON CERTAIN CONTRIBUTIONS - MAYORAL EXECUTIVE ORDER NO. 05-1.**

28.1 The Developer agrees that the Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in the Developer of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, the Developer's contractors (i.e., any person or entity in direct contractual privity with the Developer regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (the Developer and all the other preceding classes of persons and entities are together the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (a) after execution of this Agreement by the Developer, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to February 10, 2005, the effective date of Executive Order 2005-1.

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

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

28.4 The Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

28.5 Notwithstanding anything to the contrary contained herein, the Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 28 or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract,



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at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

28.6 If the Developer intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the Closing, the City may elect to decline to close the transaction contemplated by this Agreement.

28.7 For purposes of this provision:

(a) "Bundle" means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.

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

(c) "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(d) Individuals are "domestic partners" if they satisfy the following criteria:

(i) they are each other's sole domestic partner, responsible for each other's common welfare; and

(ii) neither party is married; and

(iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

(iv) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(v) two of the following four conditions exist for the partners:

(1) The partners have been residing together for at least 12 months.

(2) The partners have common or joint ownership of a residence.

(3) The partners have at least two of the following arrangements:

(A) joint ownership of a motor vehicle;

(B) joint credit account;

(C) a joint checking account;

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(D) a lease for a residence identifying both domestic partners as tenants.

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

(e) “Political fundraising committee” means a “political fundraising committee” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

## SECTION 29. MISCELLANEOUS.

The following general provisions govern this Agreement:

29.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single, integrated instrument.

29.2 Cumulative Remedies. The remedies of any party hereunder are cumulative and the exercise of any one or more of such remedies shall not be construed as a waiver of any other remedy herein conferred upon such party or hereafter existing at law or in equity, unless specifically so provided herein.

29.3 Date for Performance. If the final date of any time period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of Illinois or the United States of America, then such time period shall be automatically extended to the next business day.

29.4 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations and discussions. This Agreement may not be modified or amended in any manner without the prior written consent of the parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party benefited by such term.

29.5 Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

29.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

29.7 Headings. The headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

29.8 No Merger. The terms of this Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the terms of this Agreement.

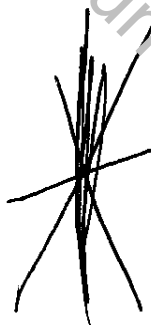
# UNOFFICIAL COPY

29.9 No Waiver. No waiver by the City with respect to any specific default by the Developer shall be deemed to be a waiver of the rights of the City with respect to any other defaults of the Developer, nor shall any forbearance by the City to seek a remedy for any breach or default be deemed a waiver of its rights and remedies with respect to such breach or default, nor shall the City be deemed to have waived any of its rights and remedies unless such waiver is in writing.

29.10 Severability. If any term of this Agreement or any application thereof is held invalid or unenforceable, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

29.11 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

*(Signature Page Follows)*



# UNOFFICIAL COPY

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on or as of the date first above written.

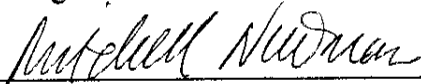
**CITY OF CHICAGO**, an Illinois municipal corporation

By: 

Kathleen Nelson  
First Deputy Commissioner of Planning and Development

**LAKE PARK PARTNERS II, L.L.C.**, an Illinois limited liability company

By: **Strategem Home Builders, LLC**, an Illinois limited liability company  
Its Manager

By:   
Mitchell Newman  
Its Manager

**THIS INSTRUMENT PREPARED BY, AND AFTER RECORDING, PLEASE RETURN TO:**

Lisa Misher  
Assistant Corporation Counsel  
City of Chicago  
30 North LaSalle Street, Suite 1610  
Chicago, Illinois 60602  
(312) 742-3932

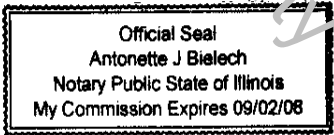
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Antonette J Bielech, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Kathleen Nelson, the First Deputy Commissioner of Planning and Development of the City of Chicago, an Illinois municipal corporation, 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, being first duly sworn by me, acknowledged that, as said Commissioner, she signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as her free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 24<sup>th</sup> day of July, 2007.



Antonette J Bielech  
NOTARY PUBLIC

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Anjali Sandhu, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Mitchell Newman, personally known to me to be the Manager of Strategem Home Builders, LLC, an Illinois limited liability company, the Manager of Lake Park Partners II, L.L.C., an Illinois limited liability company, 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, being first duly sworn by me, acknowledged that he signed and delivered the foregoing instrument pursuant to authority given by Lake Park Partners II, L.L.C., as his free and voluntary act and as the free and voluntary act and deed of Lake Park Partners II, L.L.C., for the uses and purposes therein set forth.

GIVEN under my notarial seal this 18<sup>th</sup> day of July, 2007.

Anjali Sandhu  
NOTARY PUBLIC



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF CITY LAND

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

#### PARCEL 1:

LOT 5 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL ¼ OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1247 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-014-0000

#### PARCEL 2:

LOT 15 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL ¼ OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1227 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-004-0000

# UNOFFICIAL COPY

## EXHIBIT B

### NARRATIVE DESCRIPTION OF PROJECT

The Project consists of two (2), 3½ story condominium buildings, one with four (4) units and the other with eight (8) units. Each of the twelve (12) condominium units in the Project will have at least two (2) bedrooms and two (2) full baths, and will range in size from approximately 1,250 to 1,500 square feet. Each condominium unit will have one off-street parking space included in the base sales price, and will comply with the LEED (Leadership in Energy and Environmental Design) Chicago standard. The buildings will be all masonry with facades designed to compliment the existing architecture of the neighborhood.

A handwritten signature consisting of several overlapping, stylized loops and lines, positioned above a large, faint watermark.

# UNOFFICIAL COPY

## EXHIBIT C

### LEGAL DESCRIPTION OF PRIVATE LOTS

#### PROJECT LOTS:

#### PART OF 4-UNIT BUILDING WITH FUTURE ADDRESS OF 1249 EAST. 46<sup>th</sup> STREET

PORTION OF LOT 4 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1249 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-015-0000

#### PART OF 8-UNIT BUILDING WITH FUTURE ADDRESS OF 1227 EAST. 46<sup>th</sup> STREET

PORTION OF LOT 14 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1229 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-005-0000

PORTION OF LOT 16 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1225 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-003-0000



# UNOFFICIAL COPY

PORTION OF LOT 17 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1223 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-002-0000

## ADJACENT BUILDING LOTS:

PART OF 8-UNIT BUILDING WITH FUTURE ADDRESS OF 1231 EAST 46<sup>th</sup> STREET

PORTION OF LOT 14 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1229 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-005-0000

ALL OF LOT 13 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1231 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-006-0000

# UNOFFICIAL COPY

ALL OF LOT 12 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1233 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-007-0000

PART OF 3 UNIT BUILDING WITH FUTURE ADDRESS OF 1223 EAST 46<sup>th</sup> STREET

PORTION OF LOT 17 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1223 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-002-0000

PORTION OF LOT 16 IN MARCUS M. BROWN'S SUBDIVISION OF LOTS 8 TO 14 BOTH INCLUSIVE IN HENRY J. FURBER'S WOODLAWN AND LAKE AVENUE SUBDIVISION IN THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1225 EAST 46<sup>th</sup> STREET  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-02-403-003-0000

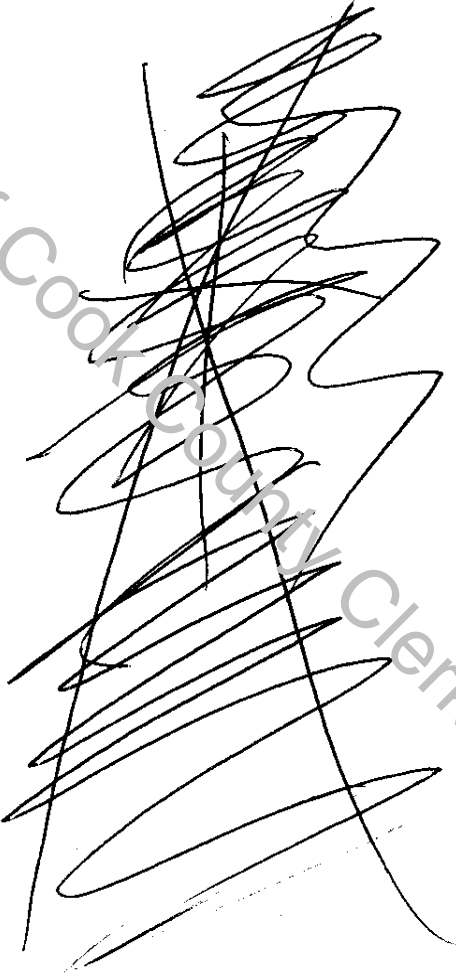
# UNOFFICIAL COPY

**EXHIBIT D**

**SITE PLAN**

(ATTACHED)

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Future addresses of Project Buildings (on City Land) and Adjacent Buildings



STREET ELEVATION

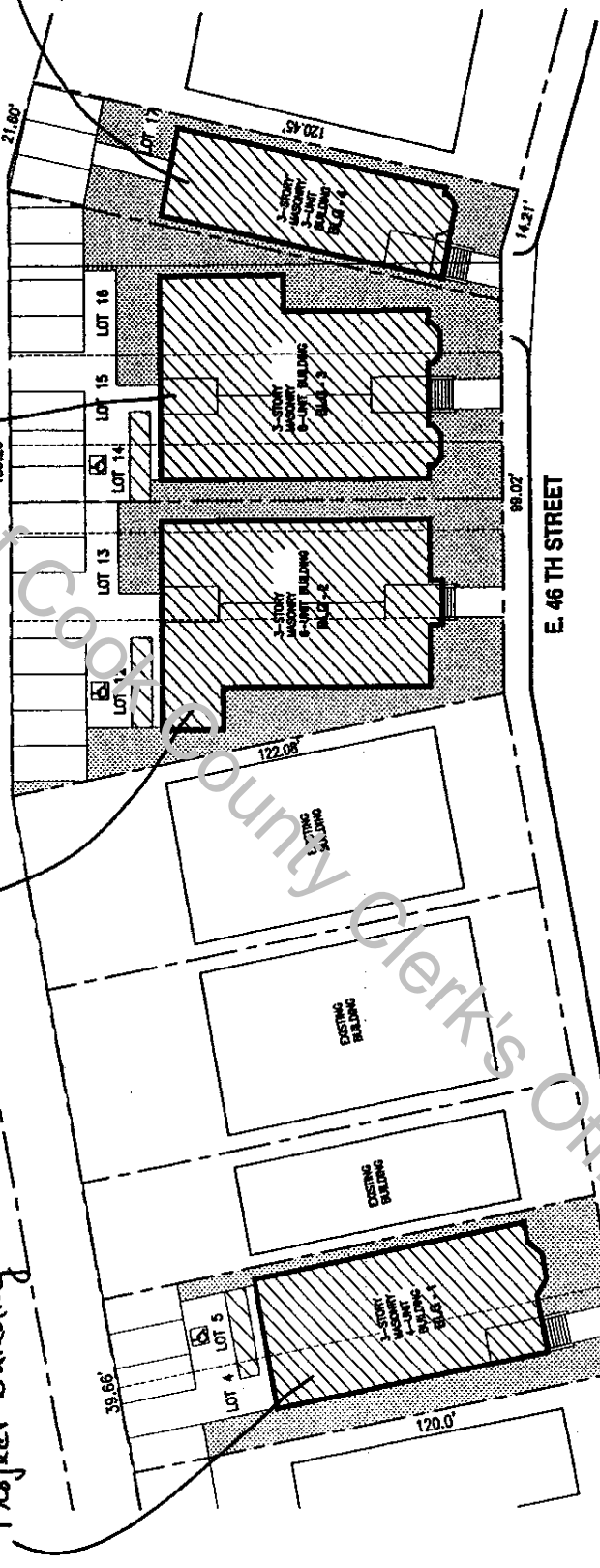
1249 E. 46th Project Building

1231 E. 46th Adjacent Building

1227 E. 46th Project Building

1223 E. 46th Adjacent Building

16' PUBLIC ALLEY



E. 46 TH STREET

ATELIER 7  
SCALE: N.T.S.

APARTMENT BUILDINGS

EAST 46 TH STREET, CHICAGO

EXTERIOR ELEVATIONS, SITE PLAN

- Lot 4 - 20-02-403-015
- Lot 5 - 20-02-403-014
- Lot 12 - 20-02-403-007
- Lot 13 - 20-02-403-006

- Lot 14 - 20-02-403-005
- Lot 15 - 20-02-403-004
- Lot 16 - 20-02-403-003
- Lot 17 - 20-02-403-002

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## EXHIBIT E

### LEGAL OPINION

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

Re: Lake Park Partners II, L.L.C.  
 Purchase of 1227 and 1247 East 46th Street, Chicago, Illinois 60653

Ladies and Gentlemen:

We have acted as counsel for Lake Park Partners II, L.L.C., an Illinois limited liability company ("Developer"), whose offices are located at 2327 W. Medill, Unit #3, Chicago, Illinois 60647, in connection with the purchase of the real property legally described on Exhibit A attached hereto (the "City Land"), pursuant to the terms of that certain Agreement for the Sale and Redevelopment of Land dated as of \_\_\_\_\_, 200\_\_, by and between the City of Chicago (the "City") and the Developer (the "Redevelopment Agreement"). We are rendering this opinion at the request of the Developer and acknowledge that the City intends to rely upon this opinion letter.

As a basis for the opinions set forth herein, we have examined:

- A. an executed original of the Redevelopment Agreement;
- B. the articles of organization, including all amendments thereto, of the Developer, as furnished and certified by the Secretary of State of the State of Illinois;
- C. the operating agreement of the Developer, as certified by the managing member of the Developer as of \_\_\_\_\_, 200\_\_;
- D. the Certificate of Good Standing dated \_\_\_\_\_, 200\_\_, issued by the Office of the Secretary of State of the State of Illinois, as to the good standing of the Developer;
- E. resolutions authorizing the Developer to enter into the Redevelopment Agreement and to consummate the transactions contemplated thereby; and
- F. the commitment for an owner's policy of title insurance, Order No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_, (the "Title Commitment"), issued by Greater Illinois Title Company, in respect of the Property.

In our capacity as counsel, we have also examined such other documents or instruments as we have deemed relevant for the purposes of rendering the opinions hereinafter set forth.

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Based upon the foregoing, it is our opinion that:

1. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has made all filings required by the laws of the State of Illinois in respect of its formation and continuing existence, and has all requisite authority to carry on its business as described in the operating agreement and to execute and deliver, and to consummate the transactions contemplated by, the Redevelopment Agreement.
2. Under the operating agreement, the managing member has requisite power and authority to execute and deliver the Redevelopment Agreement on behalf of the Developer and all other documents required to be executed by the Developer in connection with the Redevelopment Agreement and to perform its obligations thereunder.
3. The Redevelopment Agreement has been executed and delivered on behalf of the Developer by the managing member and constitutes a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, except to the extent that enforcement of any such terms may be limited by: (a) applicable bankruptcy, reorganization, debt arrangement, insolvency or other similar laws generally affecting creditors' rights; or (b) judicial and public policy limitations upon the enforcement of certain remedies including those which a court of equity may in its discretion decline to enforce.
4. There is no action, suit or proceeding at law or in equity pending nor to our knowledge threatened against or affecting the Developer or the Property before any court or before any governmental or administrative agency which if adversely determined could materially and adversely affect the Developer's ability to perform under the Redevelopment Agreement or its business or properties or financial or other conditions.
5. The execution and delivery of the Redevelopment Agreement and the consummation of the transactions contemplated thereby will not conflict with, constitute an event or default under or result in a violation or breach of:
  - (a) the provisions of the Developer's operating agreement, nor any resolutions in effect;
  - (b) the provisions of any agreement or other instrument to which the Developer is a party or by which the Developer or its properties or assets are bound; or
  - (c) any judgment, order, writ, injunction, decree or rule of any court, or any determination or award of any arbitrator, or any law, statute, ordinance, rule or regulation binding on the Developer.

Very truly yours,

[LAW FIRM SIGNATURE BLOCK]

# UNOFFICIAL COPY

## EXHIBIT F

### SUBORDINATION AGREEMENT

This instrument prepared by and after recording should be returned to:

\_\_\_\_\_  
Assistant Corporation Counsel  
City of Chicago  
30 North LaSalle Street, Suite 1610  
Chicago, Illinois 60602

This Redevelopment Subordination Agreement ("Agreement") is executed and delivered as of \_\_\_\_\_, 200\_\_, by [NAME OF LENDER], a [INSERT TYPE OF ENTITY AND STATE OF FORMATION] ("Lender"), in favor of the City of Chicago, an Illinois municipal corporation (the "City").

#### WITNESSETH:

**WHEREAS**, [INSERT NAME OF DEVELOPER], a [INSERT TYPE OF ENTITY AND STATE OF FORMATION] (the "Developer") and the City, acting by and through its Department of Planning and Development, have entered into that certain Agreement for the Sale and Redevelopment of Land dated as of \_\_\_\_\_, 200\_\_, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 200\_\_, as Document No. \_\_\_\_\_ ("Redevelopment Agreement"), pursuant to which the City has agreed to sell and the Developer has agreed to purchase the real property legally described on Exhibit A attached hereto (the "City Land"); and

**WHEREAS**, pursuant to the terms of the Redevelopment Agreement, the Developer has agreed to construct a [BRIEFLY DESCRIBE PROJECT] on the City Land (the "Project"); and

**WHEREAS**, as part of obtaining financing for the Project, the Developer and the Lender have entered into that certain Loan Agreement dated as of \_\_\_\_\_, 200\_\_ (the "Loan Agreement"), pursuant to which the Lender has agreed to provide a loan in the principal amount of up to \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) (the "Loan"), which Loan is evidenced by a Promissory Note (the "Note") in said amount to be executed and delivered by the Developer to the Lender, and the repayment of the Loan is secured by certain liens and encumbrances on the City Land pursuant to the Loan Agreement (all such agreements being referred to herein collectively as the "Loan Documents"); and

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**WHEREAS**, pursuant to the Redevelopment Agreement, the Developer has agreed to be bound by certain covenants expressly running with the City Land, as set forth in Sections 12, 14, 15 and 16 of the Redevelopment Agreement (the "City Encumbrances"); and

**WHEREAS**, the Redevelopment Agreement requires, as a condition to closing, that the Lender agree to subordinate its liens under the Loan Documents to the City Encumbrances.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender hereby agrees as follows:

1. Subordination. All rights, interests and claims of the Lender in the City Land pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances. Nothing herein, however, shall be deemed to limit any of the Lender's other rights or other priorities under the Loan Documents, including, without limitation, the Lender's rights to receive, and the Developer's obligation to make, payments and prepayments of principal and interest on the Note or to exercise the Lender's rights pursuant to the Loan Documents except as provided herein.

2. Notice of Default. The Lender shall use reasonable efforts to give to the City (a) copies of any notices of default which it may give to the Developer with respect to the Project pursuant to the Loan Documents, and (b) copies of waivers, if any, of the Developer's default in connection therewith. Neither the Developer nor any other third party is an intended beneficiary of this Section 2. Failure of the Lender to deliver such notices or waivers shall in no instance alter the rights or remedies of the Lender under the Loan Documents.

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

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

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

6. Notices. Any notice required hereunder shall be in writing and addressed to the parties as set forth below by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified first class mail, postage prepaid, return receipt requested:



# UNOFFICIAL COPY

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

With a copy to: City of Chicago  
Department of Law  
121 North LaSalle Street, Suite 610  
Chicago, Illinois 60602  
Attn: Real Estate and Land Use Division

If to the Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any notice given pursuant to clause (a) hereof shall be deemed received upon such personal service. Any notice given pursuant to clause (b) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice given pursuant to clause (c) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

**IN WITNESS WHEREOF**, Lender has executed this Redevelopment Subordination Agreement as of the date first written above.

[NAME OF LENDER]

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

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

# UNOFFICIAL COPY

## EXHIBIT G

### NOTICE OF CLOSING

City of Chicago  
 Department of Planning and Development  
 121 North LaSalle Street, Room 1006  
 Chicago, Illinois 60602  
 Attention: James Wilson

Re: Notice of Closing  
 Address: \_\_\_\_\_

Please be advised that Lake Park Partners II, L.L.C. has completed the construction of a condominium building with \_\_\_\_\_ units at the above-referenced location in accordance with that certain Agreement for the Sale and Redevelopment of Land dated as of \_\_\_\_\_, 2007, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2007, as Document No. \_\_\_\_\_ ("Redevelopment Agreement"), and would like to schedule a closing on \_\_\_\_\_, 200\_\_\_. Attached hereto please find a copy of the required Certificate of Substantial Completion for the unit. Please schedule your inspection with \_\_\_\_\_, who can be reached at (\_\_\_\_) \_\_\_\_\_. Please notify the undersigned when the Certificate of Partial Completion is available for pickup.

Sincerely,

**LAKE PARK PARTNERS II, L.L.C.**, an Illinois  
 limited liability company

By: Strategem Home Builders, LLC, an Illinois  
 limited liability company  
 Its Manager

By: \_\_\_\_\_  
 Mitchell Newman  
 Its Manager

# UNOFFICIAL COPY

## EXHIBIT H

### CERTIFICATE OF SUBSTANTIAL COMPLETION

City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1006  
Chicago, Illinois 60602  
Attention: James Wilson

Re: Notice of Closing  
Address: \_\_\_\_\_

This will certify that the condominium building at the above-referenced location has been substantially completed in accordance with the plans and specifications provided to the City and dated \_\_\_\_\_.

[PROJECT ARCHITECT]

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

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

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT I

### CALCULATION OF AFFORDABLE PRICE

As used in this Agreement, the following terms shall have the following meanings:

**“Affordable Price”** shall mean an amount less than or equal to the price at which Monthly Homeownership Costs (as defined below) for the Affordable Unit (as defined in the Recitals) would total not more than 30% of household income for a household with a family size equal to the product of 1.5 multiplied by the number of bedrooms in the Affordable Unit whose income is the maximum amount allowable for such household to qualify as a Qualified Household (as defined in the Recitals), calculated as of the time such household executes a purchase contract for the Affordable Unit.

**“Monthly Homeownership Costs”** shall mean the sum of the following estimated amounts:

- (i) monthly principal and interest payments on a 30-year fixed rate purchase money mortgage in the amount of 95% of the purchase price of the Affordable Unit, bearing interest at a rate equal to the prevailing rate as published in the Chicago Tribune (or posted on the internet website maintained by the Chicago Tribune) as of the date of calculation of Monthly Homeownership Costs, rounded up to the nearest quarter percent,
- (ii) annual estimated real property taxes for the Affordable Unit (based upon the most recently issued real estate tax bill or, if the unit is not separately assessed, as estimated by DOH), divided by 12,
- (iii) annual insurance premiums for the Affordable Unit, divided by 12, for homeowners' insurance in the amount of the replacement value of the Affordable Unit, and
- (iv) monthly condominium assessment payments or similar homeowners' association payments for the Affordable Unit, if applicable.

# UNOFFICIAL COPY

## EXHIBIT J

### AFFIDAVIT

I, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, hereby state under oath as follows:

1. I am purchasing the property located at \_\_\_\_\_, Chicago, Illinois (the "Property"), from Lake Park Partners II, L.L.C. (the "Developer").
2. In conjunction with my purchase of the Property, I have supplied certain information to Developer or to my lender concerning income and employment.
3. I approved the transmission of such income and employment information to the City of Chicago ("City"), and I understand the City used this information to determine if I, as purchaser of the Property, meet the guidelines contained in that certain Agreement for the Sale and Redevelopment of Land dated as of \_\_\_\_\_, 2007, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2007, as Document No. \_\_\_\_\_ ("Redevelopment Agreement"), concerning income and employment eligibility.
4. The Developer informed me that I met the guidelines contained in the Redevelopment Agreement.
5. I certify that said income and employment information supplied to the City by Developer or the lender has not substantially changed.

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

SUBSCRIBED AND SWORN to  
before me this \_\_\_\_ day of

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

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_.