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(1 of 5)

## AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND



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Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 08/23/2007 07:20 AM Pg: 1 of 41

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Property of Cook County Clerk's Office

(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 16 day of August, 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 **6301 N. WESTERN, L.L.C.**, an Illinois limited liability company, ("Developer"), located at 3132 W. Devon Avenue, Chicago, Illinois 60659.

### RECITALS

**WHEREAS**, the Developer desires to purchase from the City certain real property having the common address of 6301- 6333 North Western Avenue, Chicago, Illinois, as more fully described on **Exhibit A** attached hereto (the "Property"); and

**WHEREAS**, the Property is currently being utilized as a City owned parking lot with parking meters located within the Devon Avenue Business District falling within the Devon/Western Tax Increment Financing Redevelopment Project Area (the "Project Area"), as created by ordinances of the Chicago City Council dated November 3, 1990 and published at pages 13333 through 13457 of the Journal of the Proceedings of the City Council of the City of Chicago; and

**WHEREAS**, the full cash market value of the Property is One Million Seven Hundred Seventy Thousand Dollars (\$1,770,000); and

**WHEREAS**, the City is willing to sell the Property to the Developer for the market value in consideration of the Developer's fulfillment of its obligations under this Agreement including the obligations to develop, construct and operate a three-story structure that includes a 9,950 square foot retail shopping mall on the first level, a two level parking deck structure that shall accommodate one hundred thirty-eight (138) parking spaces, as more fully described herein, and various parkway plantings and street trees at the Property. The parkway planting and street trees

41/8

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will comply with the City of Chicago Landscape Ordinance and provide for a minimum of one tree per 25 lineal feet of building frontage. A storm water retention area for roof run-off located directly below the vehicular entrance ramp to the parking deck structure shall be included in the Property construction plans, all as more fully set forth in Exhibit B attached hereto; and

**WHEREAS**, the Developer intends to develop and improve the Property with a three-story structure with six retail spaces on the first level and a total of 138 parking spaces that shall be open for short term and long term use to the public and neighboring businesses and their customers (the "Project"), all to be constructed at a cost of Six Million Five Hundred Eighty Four Thousand Three Hundred Seventeen and no/100 Dollars (\$6,584,317.00); and

**WHEREAS**, the Project is consistent with the Devon/Western Tax Increment Redevelopment Plan and Project (the "Redevelopment Plan"); and

**WHEREAS**, the Developer is obtaining a mortgage loan from Western Springs National Bank in the amount of Seven Million Two Hundred Thousand and no/100 Dollars (\$7,200,000), which is 80% of the acquisition cost and cost of construction, to finance the Project (the "WSNB Loan");

**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:

## **SECTION 1. INCORPORATION OF RECITALS.**

The recitals set forth above 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.**

Subject to the terms, covenants and conditions of this Agreement, the City agrees to sell the Property to the Developer, and the Developer agrees to purchase the Property from the City for the amount of One Million, Seven Hundred Seventy Thousand and no/100 Dollars (\$1,770,000) ("Purchase Price"). Payment for the Property must be paid by cashier's or certified check on the Closing Date. All other closing costs shall be borne by Developer.

## **SECTION 3. EARNEST MONEY AND PERFORMANCE DEPOSIT.**

3.1 Earnest Money. No earnest money is due for this transaction.

3.2 Performance Deposit. Upon execution of this Agreement, the Developer shall deposit with the City a Performance Deposit amount of Eighty Eight Thousand Five Hundred and 00/100 Dollars (\$88,500), as security for the performance of its obligations

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under this Agreement ("Performance Deposit"), which the City will retain until the City issues a Certificate of Completion (as defined in Section 13). The Performance Deposit shall be refunded to the Developer upon the issuance of said Certificate of Completion or otherwise pursuant to the provisions of this Agreement, but shall be forfeited to the City if the Developer defaults in any of its obligations under the terms of this Agreement (i.e., any "Event of Default" as defined in Section 19.C.2. of this Agreement).

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

## SECTION 4. CLOSING.

The closing of the transfer of the Property from the City to the Developer ("Closing") shall take place at the downtown offices of Chicago Title Insurance Company, 171 North Clark Street, Chicago, Illinois 60601, within thirty (30) days after the Developer has obtained all necessary building permits and zoning approvals for the Project, as required pursuant to Section 7, or on such date as the parties mutually agree upon in writing (the "Closing Date"); provided, however, in no event shall the closing occur (1) until and unless the conditions precedent set forth in Section 9 are all satisfied, unless DPD, in its sole discretion waives such conditions, and (2) any later than July 30, 2007 (the "Outside Closing Date"), unless DPD, in its sole discretion, extends the Outside Closing Date. The last DPD extension for the Closing expired on April 15, 2007. At the Closing, the City shall deliver to the Developer (i) the Deed and (ii) possession of the Property, each subject only to the Permitted Exceptions.

## SECTION 5. CONVEYANCE OF TITLE.

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

1. the Redevelopment Plan for the Redevelopment Area;
2. standard exceptions in an ALTA title insurance policy;
3. general real estate taxes and any special assessments or other taxes;
4. all easements, encroachments, covenants and restrictions of record and not shown of record that will not adversely affect the use and insurability of the Property for the development of the Project;
5. such other title defects as may exist that will not adversely affect the use and insurability of the Property for the development of the Project; and

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6. any and all exceptions caused by the acts of the Developer or its agents.

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

C. Escrow. If the Developer requires conveyance through escrow, the Developer shall pay all escrow fees.

## SECTION 6. TITLE, SURVEY AND REAL ESTATE TAXES.

6.1 Title Commitment and Insurance. Not less than 30 days before the anticipated Closing Date, the Developer shall order a current title commitment issued by Chicago Title Insurance Company (the "Title Company"). The Developer shall pay the cost of, and shall be responsible for, obtaining on the Closing Date, any title insurance, extended coverage and any endorsements it deems necessary. The City agrees to provide the Title Company with a completed ALTA owner's statement, and other transfer documents typically required by the Title Company and typically provided by the City (but expressly excluding, however, any "gap" undertakings, title indemnities and similar liabilities) at or prior to the Closing (as defined below).

6.2. Survey. The Developer will be responsible for obtaining, at Developer's expense, a survey for the Property.

6.3 Real Estate Taxes. The City shall use reasonable efforts to obtain the waiver of any delinquent real estate tax liens on the Property prior to the Closing Date. If the City is unable to obtain the waiver of any such tax liens, either party may terminate this Agreement. If the City is unable to obtain the waiver of such taxes and the Developer elects to close, the Developer shall assume the responsibility for any such delinquent real estate taxes. The Developer shall also be responsible for all taxes accruing after the Closing. Until a Certificate of Completion (as described in Section 13) is issued by the City, the Developer shall notify the City that either the Property is certified as exempt from taxation or that the real estate taxes have been paid in full within ten days of such payment.

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

The Developer shall apply for all necessary building permits and other required permit approvals no later than thirty (30) days after the City Council authorizes the sale of the Property, shall pursue such permits and approvals in good faith and with all due diligence, and shall provide evidence prior to the Closing.

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

The total project budget is currently estimated to be Six Million Five Hundred Eighty Four Thousand Three Hundred Seventeen and no/100 Dollars (\$6,584,317) (the "Preliminary

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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 preliminary project budget ("Budget") and evidence of funds adequate to finance the purchase of the Property and construct the Project ("Proof of Financing"). The Proof of Financing shall include a binding commitment for the WSNB Loan, and evidence of the Developer's ability to make an equity contribution in the amount of no less than One Million Two Hundred Seventy Thousand and no/100 Dollars (\$1,270,000).

## 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 seven (7) days prior to the Closing Date, the Developer shall have delivered to the City evidence of all building permits and other final governmental approvals, including but not limited to all requisite zoning approvals, necessary to construct the Project; provided, however, the Developer is not required to deliver building permits for structures for self-certification.

9.2 Budget and Proof of Financing. At least seven (7) days prior to the Closing Date, the City shall have approved the Developer's Budget and Proof of Financing.

9.3 Simultaneous Loan Closing. On the Closing Date, the Developer shall simultaneously close the WSNB Loan and be in a position to immediately commence construction of the Project.

9.4 Insurance. At least seven (7) days prior to the Closing Date, the Developer shall provide evidence of insurance reasonably acceptable to the City prior to the Closing Date. Prior to the issuance of a Certificate, the City shall be named as an additional insured on any liability insurance policies and as a loss payee (subject to the prior rights of any first mortgagee) on any property insurance policies from the Closing Date through the date the City issues the Certificate of Completion (as defined in Section 13). 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.

9.5 Legal Opinion. At least seven (7) days prior to the Closing Date, the Developer shall have delivered to the City a legal opinion in substantially the same form attached hereto as Exhibit C.

9.6 Due Diligence. At least seven (7) days prior to the Closing Date, the Developer and the Developer's sole Manager, Amrit J. Patel, shall have delivered to the City due diligence searches in their respective names name (UCC, State and federal tax lien, pending litigation and judgments in Cook County and the U.S. District Court for the Northern District of



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Illinois, and bankruptcy) showing no unacceptable liens, litigation, judgments or filings, as reasonably determined by the City's Corporation Counsel.

9.7 Organization and Authority Documents. At least seven (7) days prior to the Closing Date, the Developer shall have delivered to the City the certified articles of organization, including all amendments thereto, of the Developer, as furnished and certified by the Secretary of State of the State of Illinois; resolution authorizing the Developer to execute and deliver this Agreement; and any other documents required to complete the transaction contemplated by this Agreement and to perform its obligations under this Agreement; a Certificate of Good Standing dated no more than thirty (30) days prior to the Closing Date, issued by the Office of the Secretary of State of the State of Illinois, as to the good standing of the Developer; and such other organizational documents as the City may reasonably request.

9.8 Subordination Agreement. 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 D** (the "Subordination Agreement").

9.9 MBE/WBE and Local 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") monitoring section regarding compliance with the MBE/WBE and local hiring requirements set forth in this Agreement pursuant to 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.

9.10 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.

9.11 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 period 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, 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.

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## SECTION 10. SITE PLANS AND ARCHITECTURAL DRAWINGS.

10.1. Site Plans. The Developer agrees to construct the Project on the Property in accordance with the Site Plans and Architectural Drawings prepared by VOA Associates Incorporated dated May 17, 2007, which have been approved by DPD as of the date hereof and which are incorporated herein by reference ("Drawings"). No material deviation from the Drawings may be made without the prior written approval of DPD.

10.2. Relocation of Utilities, Curb Cuts and Driveways. To the extent necessary to complete the Project, the Developer shall be solely responsible for and shall pay all costs in regard to: (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 the Developer's redevelopment; (c) the removal of existing pipes, utility equipment or building foundations; and (d) the termination of existing water or other services. Any streetscaping, including any paving of sidewalks, landscaping and lighting provided by the Developer, as part of the Project must be approved by the City.

10.3. Inspection by the City. For the period commencing on the Closing Date and continuing through the date the City issues a Certificate of Completion, any duly authorized representative of the City shall have access to the Property 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. The Developer agrees to erect such signs as the City may reasonably require identifying the Property as a City redevelopment project. The Developer may erect signs of its own incorporating such approved identification information upon the execution of this Agreement, prior to Closing. Prior to the commencement of any construction activity requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City shall have the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades, which approval shall not be unreasonably withheld or delayed.

## SECTION 11. LIMITED APPLICABILITY.

DPD's approval of the Drawings are for the purposes of this Agreement only and do not constitute the approval required by the City's Department of Construction and Permits ("DCAP") or any other City department; nor does the approval by DPD pursuant to this Agreement constitute an approval of the quality, structural soundness or the safety of any improvements located or to be located on the Property. The approval given by DPD shall be only for the benefit of the Developer and any lienholder authorized by this Agreement.

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## SECTION 12. COMMENCEMENT AND COMPLETION OF PROJECT.

The conveyance of the Property to the Developer shall not occur unless and until the Developer is prepared to commence construction of the Project within thirty (30) days after the Closing Date. In no instance shall (a) the Closing Date occur later than the dates set forth in Section 4 herein, (b) construction commence later than six (6) months after the Closing Date, or (c) construction be completed later than twelve months (12) after the Closing Date. DPD shall have discretion to extend the dates in (b) and (c) by up to six months each (i.e. 12 months, in aggregate) by issuing a written extension letter. The Project shall be constructed and operated substantially in accordance with the Drawings and in accordance with all applicable laws, regulations and codes.

## SECTION 13. CERTIFICATE OF COMPLETION.

Upon the completion of the Project in accordance with this Agreement, the Developer shall request from the City a Certificate of Completion ("Certificate") in recordable form. Recordation of such Certificate shall constitute a conclusive determination of satisfaction and termination of the covenants in this Agreement and the Deed with respect to the obligations of the Developer to construct the Project. Within thirty (30) days after receipt of a written request by the Developer for a Certificate, the City shall provide the Developer with either the Certificate or a written statement indicating in adequate detail how the Developer has failed to complete the Project in conformity with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the City, for the Developer to take or perform in order to obtain the Certificate. If the City requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate upon compliance with the City's response. The Project shall be constructed in accordance with the Drawings and all applicable laws, regulations and codes.

## SECTION 14. RESTRICTION ON USE.

The Developer agrees that it:

(a) shall develop the Property with the project described herein and thereafter devote the Property or any part thereof to a use that complies with the Redevelopment Plan until the Redevelopment Plan expires; and

(b) 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 Property or any part thereof; and



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## SECTION 15. PROHIBITION AGAINST TRANSFER OF PROPERTY.

Prior to the issuance of the Certificate, as provided herein, the Developer may not, without the prior written consent of DPD, which consent shall be in DPD's sole discretion: (a) directly or indirectly sell or convey the Property or any part thereof or any interest therein, or the Developer's controlling interests therein; or (b) directly or indirectly assign this Agreement. In the event of a proposed sale, the City shall be provided copies of any and all sales contracts, legal descriptions, descriptions of intended use, certifications from the proposed buyer regarding this Agreement and such other information as the City may reasonably request. The proposed buyer must be qualified to do business with the City (including but not limited to anti-scofflaw requirement). Notwithstanding the foregoing, the Developer shall be permitted to encumber the Property in accordance with the terms of Section 16 hereof.

## SECTION 16. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

Prior to the issuance of the Certificate, 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 creates an encumbrance or lien on the Property, except for the purposes of obtaining (i) funds necessary to acquire the Property; (ii) funds necessary to construct the Project in accordance with the initial construction financing approved by DPD pursuant to Section 8 and (iii) after construction, funds necessary to own, maintain and operate the Property in accordance with the requirements of this Agreement.

## 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 9.8). If any such mortgagee or its affiliate succeeds to the Developer's interest in the Property 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 Property 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 Sale or Transfer of Property) and Section 16 (Limitation Upon Encumbrance of Property) 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

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favor of the City, and shall be enforceable by the City. The covenants provided in Section 12, Section 15 and Section 16 shall terminate upon the issuance of the Certificate of Completion. The covenants provided in Section 14(a) shall terminate upon the expiration of the term of the Redevelopment Plan. The covenants provided in Section 14(b) shall run with the land in perpetuity.

## SECTION 19. PERFORMANCE AND BREACH.

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

B. 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 but not limited to, 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 it in writing of the City within twenty days after the beginning of any such delay.

C. Breach.

1. Generally. Subject to Section 19.B., if the Developer defaults in performing its obligations under this Agreement and the City shall deliver written notice of such default, the Developer shall have a 60 day cure period to remedy such default from the City's delivery of such notice. If the default is not capable of being cured within the sixty day period, then provided the Developer has commenced to cure the default and is diligently proceeding to cure the default within the sixty day period, and thereafter diligently prosecutes such cure through to completion, then the sixty day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable to cure and remedy the default, including but not limited to, proceedings to compel specific performance.

No notice or cure period shall apply to a failure to close the respective dates as set forth in Section 4 herein. Unless the failure to close is due to circumstances described in Section 19.B. above or caused by a breach by the City under the terms of this Agreement, such failure shall constitute an immediate "Event of Default". Failure to close by such Closing Date shall entitle the City to terminate this Agreement.

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2. Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" after written notice from the City (if required) and the applicable cure or grace period (if any):

a. The Developer fails to perform any obligation of Developer under this Agreement; which default is not cured pursuant to Section 19.C.1; or

b. The Developer makes or furnishes a warranty, representation, statement or certification to the City (whether in this Agreement, an Economic Disclosure Form, or another document) which is not true and correct, which default is not cured pursuant to Section 19.C.1; or

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

d. Except as excused by Section 19.B. above, the Developer abandons or substantially suspends the construction work (no notice or cure period shall apply); or

e. The Developer fails to timely pay real estate taxes or assessments affecting the Property or suffers or permits any levy or attachment, material suppliers' or mechanics' lien, or any other lien or encumbrance unauthorized by this Agreement to attach to the Property, which default is not cured pursuant to Section 19.C.1; or

f. The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement (no notice or cure period shall apply); or

g. The Developer's financial condition, operations adversely changes to such an extent that would materially affect the Developer's ability to complete the Project which default is not cured pursuant to Section 19.C.1; or

h. The Developer fails to comply with the terms of any other written agreement entered into with the City with respect to the Project, which default is not cured pursuant to Section 19.C.1; or

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- i. Failure to close by the respective dates as set forth in Section 4 herein (no notice shall apply), except as excused by Section 19.B. above.
3. Prior to Conveyance. Prior to Closing, if an Event of Default occurs and is continuing, the City may terminate this Agreement.
4. After Conveyance. After Closing, if an Event of Default occurs and is continuing, the City, may exercise any and all remedies available to the City at law or in equity, including but not limited to, the right to re-enter and take possession of the Property, terminate the estate conveyed to the Developer, and re-vest title to the Property in the City; provided, however, that the re-vesting of title in the City shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement. Notwithstanding the foregoing, after the issuance of a Certificate, the City's right of reverter shall no longer be enforceable but the City shall be entitled to all other remedies, including, without limitation, specific enforcement of the covenants that run with the land.
5. Resale of the Property. Upon the re-vesting in the City of title to the Property as provided in Section 19.C.4, the City shall employ its best efforts to convey the Property (subject to any first mortgage lien permitted under this Section) to a qualified and financially responsible party (as solely determined by the City) who shall assume the obligation of completing the construction of the Project or such other improvements as shall be satisfactory to the City and complying with the covenants that run with the land, as specified in Section 18.
6. Disposition of Resale Proceeds. If the City sells the Property, the net proceeds from the sale shall be utilized to reimburse the City for:
  - a. unreimbursed costs and expenses incurred by the City in connection with the Property, including but not limited to, salaries of personnel in connection with the recapture, management and resale of the Property; and
  - b. all unpaid taxes, assessments, and water and sewer charges assessed against the Property; and
  - c. any payments made (including reasonable attorneys' fees) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; and

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- d. any expenditures made or obligations incurred with respect to construction or maintenance of the Project; and
- e. the fair market value of the land comprising the Property (without any Project or partially constructed Project thereon) as of such sale; and
- f. 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 Property.

D. Waiver and Estoppel. Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by the Developer shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of the Developer.

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

The Developer warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement or the Property, 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 entity or association 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 on any obligation under the terms of this Agreement. It is expressly understood and agreed to by and between the parties hereto, anything herein to the contrary notwithstanding, that no individual member of the Developer, its officers, members of its board of directors, officials, agents, representatives or employees shall be personally liable for any of the Developer's obligations or any undertaking or covenant of the Developer contained in this Agreement.

## **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: (i) an Event of Default that has occurred; (ii) the failure of the Developer or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Project; (iii) the failure of the Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (iv) any actions, including but not limited to, conducting environmental tests on the Property



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as set forth in Section 22 herein, resulting from any activity undertaken by the Developer on the Property prior to or after the conveyance of said Property to the Developer by the City. This indemnification shall survive any termination of this Agreement.

## **SECTION 22. ENVIRONMENTAL MATTERS.**

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

It shall be the responsibility of the Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property. Prior to the Closing, the Developer shall have the right to request a 30 day right of entry for the purpose of conducting environmental tests on the Property. If such a request is made, the City shall grant the Developer a right of entry for such purpose. The granting of the right of entry, however, shall be contingent upon the Developer obtaining all necessary permits and the following types and amounts of insurance: a) commercial general liability insurance with a combined single limit of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the environmental testing on the Property; b) automobile liability insurance with limits of not less than \$2,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and c) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to do any work on the Property. All insurance policies shall be from insurance companies authorized to do business in the State of Illinois, and shall remain in effect until completion of all activity on the Property. The City shall be named as an additional insured on all policies. The Developer shall deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. The Developer expressly understands and agrees that any coverage and limits furnished by the Developer shall in no way limit the Developer's liabilities and responsibilities set forth in this Agreement.

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

The Developer agrees to deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Property. If prior to the Closing, the

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Developer's environmental consultant determines that contamination exists on the Property to such an extent that the parties agree that the estimated cost of remediation (such estimated cost being determined by the consultant) is too excessive for the Developer, the Developer may declare this Agreement null and void by giving written notice thereof to the City. The Developer agrees that a request to terminate this Agreement shall not be made until the City has reviewed all reports concerning the condition of the Property.

If after the Closing, the environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized, it shall be the sole responsibility and obligation of the Developer to take such action as is necessary to put the Property in a condition which is suitable for the intended use of the Property. The Developer agrees to waive, release and indemnify the City from any claims and liabilities relating to or arising from the environmental condition of the Property (including, without limitation, claims arising under CERCLA) and to undertake and discharge all liabilities of the City arising from any environmental condition which existed on the Property prior to the Closing.

## SECTION 23. DEVELOPER'S EMPLOYMENT OBLIGATIONS.

A. Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors and any affiliate of the Developer operating on the Property (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 Property during the construction period:

- (i) 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 race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including, without limitation: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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

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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.

- (ii) To the greatest extent feasible, the Developer and each Employer shall present opportunities for training and employment of low and moderate income residents 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.
- (iii) 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), and any subsequent amendments and regulations promulgated thereto.
- (iv) The Developer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.
- (v) The Developer and each Employer shall include the foregoing provisions of subparagraphs (i) through (iv) 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 Property, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.
- (vi) Failure to comply with the employment obligations described in this Section 23 shall be a basis for the City to pursue remedies under the provisions of Section 19.

B. **City Resident Employment Requirement.** The Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Project, it and they shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 3-92-330 of the Municipal Code of Chicago (at least fifty percent of the total worker hours worked by persons on the construction of the Project shall be performed by actual residents of the City of Chicago); 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 of Chicago in both unskilled and skilled labor positions.

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

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Chicago in accordance with standards and procedures developed by the Purchasing Agent of the City of Chicago.

“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.

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.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of the City of Chicago Department of Housing (“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 company hired the employee should be written in after the employee's name.

The Developer and the Employers shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of 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 from and after the issuance of the Certificate of Completion.

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.

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 concerning the worker hours performed by actual Chicago residents.

If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 19.C., 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

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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.

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.

The Developer shall cause or require the provisions of this Section 23.B. to be included in all construction contracts and subcontracts related to the construction of the Project.

C. 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:

- (i) Consistent with the findings which support, as applicable, (a) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (b) 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.C., during the course of the Project, the following percentages of the MBE/WBE Budget (as set forth in **Exhibit E** hereto shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs"): (1) At least 24% by MBEs; and (2) At least 4% by WBEs.
- (ii) For purposes of this Section 23.C. only:
  - (a) 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.
  - (b) 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.



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- (c) 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 business enterprise, related to the Procurement Program or the Construction Program, as applicable.
- (iii) 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 (a) the MBE or WBE participation in such joint venture, or (b) 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.C. 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 DPD.
- (iv) The Developer shall deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Developer or the general contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist 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 Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on five business days notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

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- (v) Upon the disqualification of any MBE or WBE general contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified general contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (v), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.
- (vi) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 24.C. shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.
- (vii) Prior to the commencement of the Project, the Developer shall meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this Section 23.C. The general contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 23.C., the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Developer shall submit the documentation required by this Section 23.C. to the City's monitoring staff, including the following: (a) MBE/WBE utilization plan and record; (b) subcontractor's activity report; (c) contractor's certification concerning labor standards and prevailing wage requirements; (d) contractor letter of understanding; (e) monthly utilization report; (f) authorization for payroll agent; (g) certified payroll; (h) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (i) evidence of compliance with job creation 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.C., 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: (1) issue a written demand to the Developer to halt the Project, (2) withhold any further payment of any city funds to the Developer or the general contractor, or (3) seek any other remedies against the Developer available at law or in equity.

## SECTION 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 an Illinois 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 Property, and the person signing this Agreement on behalf of the Developer has the authority to do so.

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- (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 Property is bound.
- (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 Property.

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. PROVISIONS NOT MERGED WITH DEED.**

The provisions 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 provisions of this Agreement.

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## SECTION 26. HEADINGS.

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

## SECTION 27. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

## SECTION 28. SEVERABILITY.

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

## SECTION 29. 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) electronic communications, whether by telex, telegram or telecopy, provided that there is written confirmation of such communications; (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 - City Hall  
 Chicago, Illinois 60602

With a copy to:

City of Chicago  
 Department of Law  
 121 North LaSalle Street  
 Room 600  
 Chicago, Illinois 60602  
 Attn: Real Estate Division

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If to the Developer: 6301 N. Western, L.L.C.  
3132 W. Devon Avenue  
Chicago, Illinois 60659  
Attn: Amrit J. Patel

With a copy to: Ira J. Marcus  
Marcus Perrus and Boxerman, L.L.P.  
19 South LaSalle Street  
Suite 1500  
Chicago, Illinois 60603

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively, provided that such electronic dispatch is confirmed as having occurred prior to 5:00 p.m. on a business day. If such dispatch 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 day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three business days after mailing. The parties, by notice given here-under, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

## **SECTION 30. ORGANIZATION AND AUTHORITY.**

The Developer represents and warrants that it is duly organized and validly existing under the laws of the State of Illinois, with full power and authority to acquire, own and redevelop the Property, and that the person signing this Agreement on behalf of the Developer has the authority to do so.

## **SECTION 31. 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.

## **SECTION 32. TERMINATION.**

In the event that the Closing has not occurred by the each of the Closing Dates defined herein, then the City may terminate this Agreement upon written notice to the Developer.



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## **SECTION 33. RECORDATION OF AGREEMENT.**

Either party may record this Agreement at the Office of the Cook County Recorder of Deeds. The party so choosing to record this Agreement shall pay the recording fees.

## **SECTION 34. CONSENT AND APPROVAL.**

Except where otherwise specified, whenever the consent or approval of the City is required hereunder, such consent or approval shall not be unreasonably withheld or delayed.

## **SECTION 35. OTHER ACTS.**

The parties agree to perform such other acts and to execute, acknowledge and deliver such other instruments, documents and materials as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

## **SECTION 36. 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 37. PATRIOT ACT CERTIFICATION.** The Developer represents and warrants that neither the Developer nor any Affiliate thereof (as defined in the next paragraph) 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 law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, 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,

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is controlled by or is under common control with Developer, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any 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 38. PROHIBITION ON CERTAIN CONTRIBUTIONS-MAYORAL EXECUTIVE ORDER NO. 05-1.**

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

Developer represents and warrants that from the later to occur of (a) February 10, 2005, and (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.

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.

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.

Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision 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, under any

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

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

For purposes of this provision:

“Bundle” means to collect contributions from more than one source, which is then delivered by one person to the Mayor or to his political fundraising committee.

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

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

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

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) 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. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  - 4. Each partner identifies the other partner as a primary beneficiary in a will.

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

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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: Arnold Randall  
~~Kathleen Nelson~~ ARNOLD RANDALL  
First Deputy Commissioner of Planning and  
Development

**6301 N. WESTERN, L.L.C.,**  
an Illinois limited liability company

By: [Signature]  
Name: Amrit Patel  
Its: Managing member

Property of Cook County Clerk's Office

This instrument was prepared by:

Karen D. Bielarz  
Senior Counsel  
Real Estate Division  
City of Chicago  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
(312) 744-6910

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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Kim Cleveland, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Amrit Patel, 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 MANASWS Member, he signed and delivered the instrument pursuant to authority given by the 6301 N. Western LLC as his free and voluntary act and as the free and voluntary act and deed of the 6301 N. Western, LLC, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 10 day of August, 2007.



[Signature]  
NOTARY PUBLIC

Cook County Clerk's Office



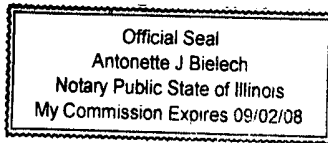
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STATE OF ILLINOIS        )  
                                      ) SS.  
COUNTY OF COOK        )

I, Antonette J Bielech, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Arnold Randall, personally known to me to be the Commissioner of Planning and Development of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as the Commissioner, she signed and delivered the 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 the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 16<sup>th</sup> day of August, 2007.

Antonette J Bielech  
NOTARY PUBLIC



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

THE SOUTH 5 FEET OF LOT 16, AND ALL OF LOTS 17 TO 22, BOTH INCLUSIVE, IN DEVON RIDGE, A RESUBDIVISION OF BLOCK 5 OF WILLIAM L. WALLENS RESUBDIVISION OF THE VACATED WILLIM L. WALLEN'S FABER ADDITION TO NORTH EDGEWATER, A SUDIVISION IN THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 6, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 6301- 6333 North Western Avenue, Chicago, Illinois

Permanent Index Numbers: 14-06-100-045-0000

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## EXHIBIT B

### NARRATIVE DESCRIPTION OF PROJECT

The Project will include a three-story structure of red brick with buff accents, limestone base, sill and cap stones, with ornamental masonry and metal accents with “green” glass storefronts, consisting of a three-story structure that includes a 9,950 square foot retail shopping mall on the first level, a two level parking deck structure that shall accommodate one hundred thirty-eight (138) parking spaces, as more fully described herein, and various parkway plantings and street trees at the Property. The parkway planting will comply with the City of Chicago Landscape Ordinance and provide for a minimum of one tree per 25 lineal feet of building frontage. A storm water retention area for roof run-off located directly below the vehicular entrance ramp to the parking deck structure shall be included in the Property construction plans.

The building design will allow for approximately six individual retail spaces with maximized ceiling heights and storefront presence. The row of retail spaces will be bordered by a tower at the South, which shall be designated as a gateway icon for the Devon Avenue retail district.

**UNOFFICIAL COPY** EXHIBIT C**MARCUS, PERRES & BOXERMAN, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

19 SOUTH LASALLE STREET

SUITE 1500

CHICAGO, ILLINOIS 60603

IRA J. MARCUS

LEE SCOTT PERRES

MICHAEL J. BOXERMAN\*

O. TERRY SHAVER

DIANA A. CARPINTERO

MICHAEL DIMAND

KEVIN HUNT

SEAMUS M. RYAN

TELEPHONE (312) 641-2233

FACSIMILE (312) 332-4629

\*Also Admitted in Missouri

OF COUNSEL

JOHN J. DWYER, JR.

ROGER V. MCCAFFREY-BOSS

August 16, 2007

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

Re: 6301 N. Western LLC  
 Purchase of 6301-6333 North Western, Chicago, Illinois

Ladies and Gentlemen:

We have acted as counsel for 6301 N. Western, L.L.C., an Illinois limited liability company ("Developer"), whose offices are located at 3137 W. Devon Avenue, Chicago, Illinois 60659, in connection with the purchase of the real property legally described on Exhibit A attached hereto, pursuant to the terms of that certain Agreement for the Sale and Redevelopment of Land dated as of August 16, 2007, 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 Certificate of Good Standing dated July 30, 2007, issued by the Office of the Secretary of State of the State of Illinois, as to the good standing of the Developer;
- D. the commitment for an owner's policy of title insurance, Order No. 008257370, dated April 19, 2007 and updated July 24, 2007, (the "Title Commitment"), issued by Chicago Title Insurance 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.

Based upon the foregoing, it is our opinion that:

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MARCUS, PERRES & BOXERMAN, LLP

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 articles of organization and to execute and deliver, and to consummate the transactions contemplated by, the Redevelopment Agreement.

2. 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.

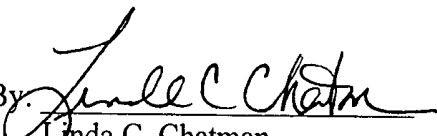
3. The Redevelopment Agreement has been executed and delivered on behalf of the Developer by the Managing Member and constitutes a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, except to the extent that enforcement of any such terms 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 organizational documents;
- (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,  
Marcus, Boxerman & Chatman

By:   
Linda C. Chatman

LCC/kc  
enclosures



**UNOFFICIAL COPY**Exhibit D

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

Karen Bielarz  
Senior Counsel  
City of Chicago  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602

**REDEVELOPMENT SUBORDINATION AGREEMENT**

This Redevelopment Subordination Agreement ("Agreement") is executed and delivered as of August 16, 2007, by Western Springs National Bank and Trust, a nationally chartered commercial bank ("Lender"), in favor of the City of Chicago, an Illinois municipal corporation (the "City").

**WITNESSETH:**

**WHEREAS**, 6301 N Western, LLC, an Illinois limited liability company (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 August 16, 2007, and recorded with the Office of the Recorder of Deeds of Cook County, Illinois, on August \_\_\_\_\_, 2007, 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 "Property"); and

**WHEREAS**, pursuant to the terms of the Redevelopment Agreement, the Developer has agreed to construct a three-story shopping mall and parking deck sufficient to accommodate one hundred thirty eight (138) vehicles on the Property (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 August 17, 2007 (the "Loan Agreement"), pursuant to which the Lender has agreed to provide a loan in the principal amount of up to One Million Five Hundred Ninety Three and 00/100 Dollars (\$1,593,000.00) (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 Property pursuant to the Loan Agreement (all such agreements being referred to herein collectively as the "Loan Documents"); and

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

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

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**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 Property 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:

If to the City:

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

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With a copy to: City of Chicago  
Department of Law  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attn: Real Estate and Land Use Division

If to the Lender: Western Springs National Bank and Trust  
4456 Wolf Road  
Western Springs, Illinois 60558  
Attn: Jerry F. Miceli

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.

Property of Cook County Clerk's Office

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

WESTERN SPRINGS NATIONAL BANK AND TRUST, a nationally chartered commercial bank

By: 

Its: President

[INTENTIONALLY OMITTED]

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

THE SOUTH 5 FEET OF LOT 16, AND ALL OF LOTS 17 TO 22, BOTH INCLUSIVE, IN DEVON RIDGE, A RESUBDIVISION OF BLOCK 5 OF WILLIAM L. WALLENS RESUBDIVISION OF THE VACATED WILLIM L. WALLEN'S FABER ADDITION TO NORTH EDGEWATER, A SUDIVISION IN THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 6, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 6301- 6333 North Western Avenue, Chicago, Illinois

Permanent Index Numbers: 14-06-100-045-0000

Property of Cook County Clerk's Office



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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

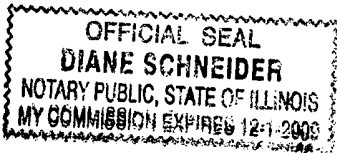
Jerry F. Miceli

I, Diane Schneider, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, I personally known to me to be the President of Western Springs National Bank and Trust, a nationally chartered commercial bank, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument, pursuant to the authority given to him/her by \_\_\_\_\_, as his/her free and voluntary act and as the free and voluntary act of \_\_\_\_\_, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16<sup>th</sup> day of August, 2007.

Diane Schneider

NOTARY PUBLIC

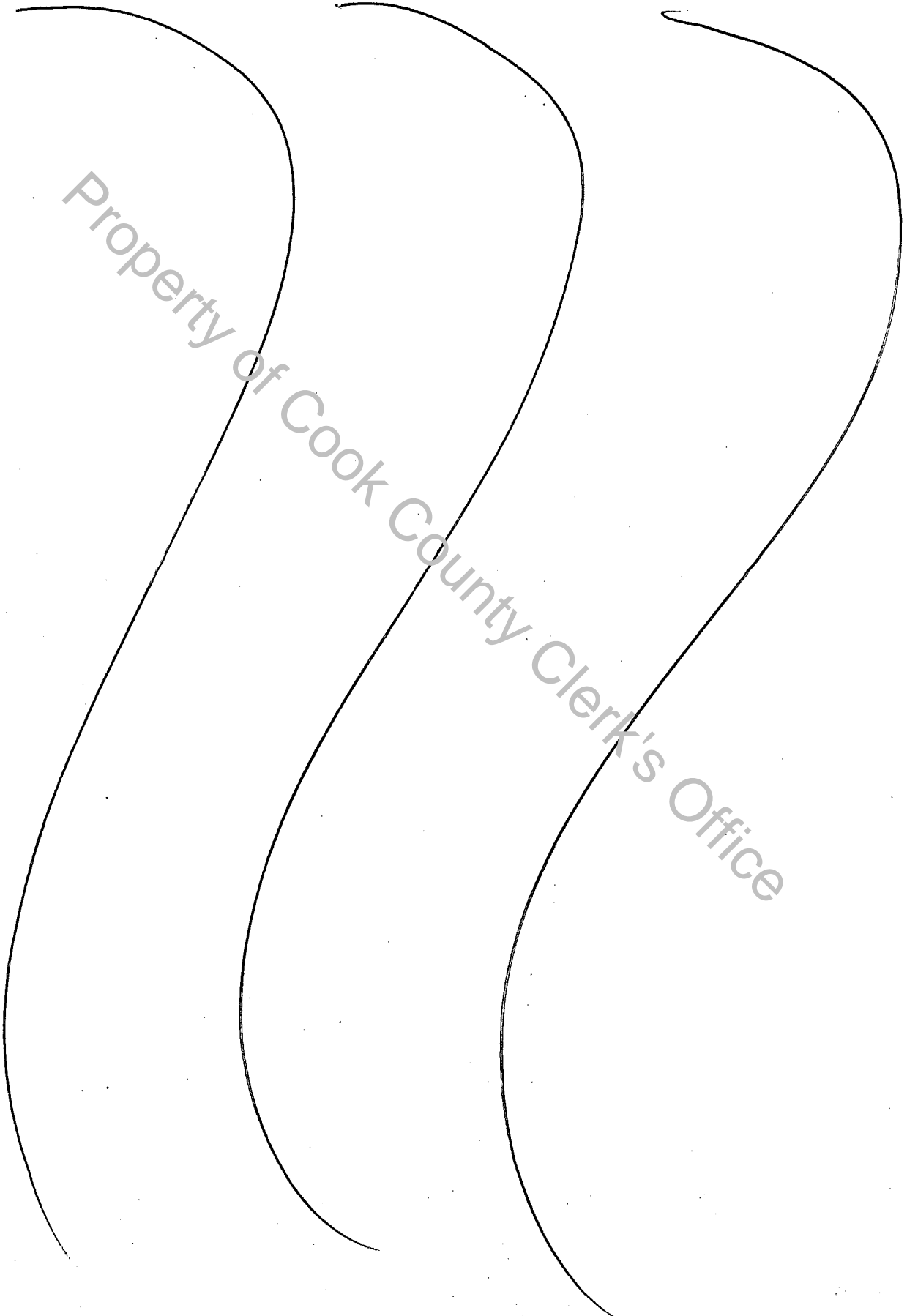


Property of Cook County Clerk's Office

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## EXHIBIT E

### MBE/WBE BUDGET



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## MONSOON PLAZA M/WBE PARTICIPATION SUMMARY

			% of Total Construction	
	MBE Participation	\$1,801,690.00	\$1,801,690.00	27.36%
	WBE Participation	\$370,000.00	\$370,000.00	5.62%
Division / Contractor	Contract Amount	MBE Participation	WBE Participation	
0.00 General Conditions / GC License Fee				
Monsoon Plaza Joint Venture	\$717,000.00	\$450,000.00		
1.00 Excavation/Demolition/Sheet Piles				
Deany Excavating	\$354,900.00			
3.40 Concrete -				
Brewer Concrete Construction	\$2,493,000.00		\$370,000.00	
4.00 Masonry				
U.S Masonry	\$1,053,690.00	\$1,053,690.00		
5.00 Metals				
Chicago Architetural Metals	\$172,000.00	\$172,000.00		
6.00 Walls, Rough Carpentry, Drywall,Painting				
MP Joint Venture	\$80,000.00			
7.00 Water Proofing & Traffic Coating				
Streich Inc	\$250,000.00			
7.10 Roofing Coping etc				
MP Joint Venture	\$63,477.00			
8.10 Windows				
CAM	\$126,000.00	\$126,000.00		
8.20 Doors				
MP Joint Venture	\$11,400.00			
10.00 Specialities				
MP Joint Venture	\$185,000.00			
14.00 Elevators				
MP Joint Venture	\$90,000.00			
15.10 Plumbing				
Aspen	\$257,000.00			
15.20 Gas				
MP Joint Venture	\$10,000.00			
15.30 Mechanical				
Cooling Equipment Services	\$335,000.00			
15.40 Fire Protection				
MP Joint Venture	\$100,000.00			
16.00 Electrical				
Dailey Electric	\$185,850.00			
17.00 Miscellaneos				
MP Joint Venture	\$100,000.00			
SUB TOTAL	\$6,584,317.00	\$1,801,690.00	\$370,000.00	