

UNOFFICIAL COPY



Doc#: 1036457133 Fee: \$128.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/30/2010 10:38 AM Pg: 1 of 47

AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND

617
(1229)

4403410 (1/2)

(The Above Space)

This **AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND** ("Agreement") is made on or as of the 22 day of December, 2010, by and between the **CITY OF CHICAGO**, an Illinois municipal corporation ("City"), acting by and through its Department of Community Development ("DCD"), having its principal offices at City Hall, 121 North La Salle Street, Chicago, Illinois 60602 and **TRUONG ENTERPRISES, INC.**, an Illinois corporation ("Developer"), whose offices are located at 2550 South Leavitt Street, Chicago, Illinois 60608.

RECITALS

WHEREAS, the Developer desires to purchase from the City an approximately 2.71 acre parcel of real property located at 2234-2310 South Halsted Street and also known as 812-832 West 23rd Street, Chicago, Illinois, and which is described on **Exhibit A** attached hereto (the "City Land"); and

WHEREAS, the City Land is located in the Pilsen Industrial Corridor Tax Increment Financing Redevelopment Project Area (the "TIF Area") which was established pursuant to ordinances adopted by the City Council of the City (the "City Council") on June 10, 1998; and

WHEREAS, the Developer shall use the City Land to construct a 55,248 square foot food distribution facility (the "Facility"), which incorporates a green roof and other state of the art features, and includes approximately 9,440 square feet of office space, a seven (7) bay receiving dock, fourteen (14) customer loading docks, as well as forty (40) parking spaces, all as more fully described on **Exhibit B** attached hereto (the "Project"); and

WHEREAS, the appraised value of the City Property is Two Million Seven Hundred Thousand Dollars (\$2,700,000.00); and

WHEREAS, the City desires to sell the City Land to the Developer for Eight Hundred Seventy Seven Thousand Ninety Six Dollars (\$877,096.00); and

47

UNOFFICIAL COPY

WHEREAS, the City Council, pursuant to an ordinance adopted on July 9, 2008, and published at pages 32538 through 32570 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 and are consistent with the plan for the TIF Area.

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 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 Eight Hundred Seventy Seven Thousand Ninety Six Dollars (\$877,096.00) ("Purchase Price"), to be paid to the City at the Closing (as defined in Section 4). The Developer acknowledges that the Purchase Price is approximately \$1,822,904.00 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 shall pay all escrow fees and other title insurance fees and closing costs.

SECTION 3. EARNEST MONEY AND PERFORMANCE DEPOSIT.

3.1 Earnest Money deposit. Developer has previously tendered to the City an earnest money deposit in the amount of One Hundred Five Thousand Thirty Eight Dollars and Forty Cents (\$105,038.40). Said deposit shall be applied to the Purchase Price at the Closing.

3.2 Performance Deposit. Developer shall deposit with the City at or before the Closing an amount equal to five percent (5%) of the purchase price, or Forty Three Thousand Eight Hundred Fifty Dollars (\$43,850.00) as security for the performance of its obligations under this Agreement ("Performance Deposit"), which the City will retain until the City issues a Certificate of Completion (as defined in Section 13). After the issuance of the Certificate of Completion and upon demand in writing the City will promptly return the Performance Deposit without payment of any interest.

UNOFFICIAL COPY

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, 120 North LaSalle Street, Chicago, Illinois 60602, or such other title company as may be selected by the Developer ("Title Company"), within thirty (30) days after the Developer has satisfied all conditions precedent set forth in Section 9, 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 December 31, 2010 (the "Outside Closing Date"), unless DCD, in its sole discretion following a written request from the Developer, 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, or its assignee, Halsted-Lumber Street, LLC, an Illinois Limited Liability Company, by quitclaim deed ("Deed"), subject to the terms of this Agreement and the following:

- (a) the redevelopment plan for the TIF Area (the "Redevelopment Plan");
- (b) the standard exceptions in an ALTA title insurance policy;
- (c) general real estate taxes and any special assessments or other taxes;
- (d) all easements, encroachments, covenants and restrictions of record and not shown of record;
- (e) such other title defects as may be identified in the Title Commitments; and 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 the following commitment for owner's policies of title insurance for the City Land, issued by the Title Company (the "Title Commitment") and showing the City in title to the City Land: Commitment Number 1301 004403410 (effective October 29, 2010). The Developer shall be solely responsible for and shall pay all costs associated with updating the Title Commitment (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.

UNOFFICIAL COPY

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 exceptions that would adversely affect the use and insurability of the City Land for the development of the Project, the Developer shall have the option to do one of the following: (a) accept title to the City Land subject to the 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 (or, if later, within 5 business days after Developer receives notice of such exceptions), in which event 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 and all deposits shall be refunded to the Developer. If the Developer elects not to terminate this Agreement as aforesaid, the Developer agrees to accept title subject to all exceptions. The Developer shall be responsible for all taxes accruing after the Closing.

SECTION 7. BUILDING PERMITS AND OTHER GOVERNMENTAL APPROVALS.

The Developer has applied for all necessary building permits and other required permits and approvals for the construction of the Project, and shall pursue such permits and approvals in good faith and with all due diligence. Unless DCD, in its sole discretion, otherwise agrees in writing, the Developer shall enroll in the Illinois Environmental Protection Agency's Site Remediation Program (the "SRP") and be responsible for all remediation at the site and upon receipt from Illinois Environmental Protection Agency (the "IEPA") shall tender to the City a copy of the IEPA correspondence indicating that no further remediation is necessary ("NFR letter").

SECTION 8. PROJECT BUDGET AND PROOF OF FINANCING.

The total budget for the Project as of March 2007 was estimated to be Six Million Three Hundred Thousand Dollars (\$6,300,000.00) (the "Preliminary Project Budget"). On the Closing Date, the Developer shall submit to DCD 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 consist of final, executed loan documents for the Project 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.

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

The obligations of the City under this Agreement are contingent upon the delivery or satisfaction of each of the following items at least fourteen (14) days prior to the Closing Date,

UNOFFICIAL COPY

unless another time period is specified below; or unless DCD, in its sole discretion following a written request from the Developer, agrees to waive any such condition:

9.1 Final Governmental Approvals. The Developer shall deliver to the City the building permits and other final governmental approvals necessary to commence construction of the Project. After the Closing Date, the Developer shall provide DCD with copies of any additional permits issued and, in any event, shall obtain all requisite permits prior to commencing construction of the project.

9.2 Budget and Proof of Financing. 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 all financing approved pursuant to Section 9.2, and be in a position to immediately commence construction of the Project.

9.4 Insurance. The Developer shall deliver 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 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.

9.5 Legal Opinion. The Developer shall deliver to the City a legal opinion in a form reasonably acceptable to the City.

9.6 Due Diligence. The Developer shall deliver 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.

9.7 Organization and Authority Documents. The Developer shall deliver to the City the Developer's articles of incorporation, including all amendments thereto, as furnished and certified by the Illinois Secretary of State; the by-laws of the Developer, as certified by the secretary of the Developer; resolutions 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 from the Illinois Secretary of State dated no more than thirty (30) days prior to the Closing; and such other corporate authority and organizational documents as the City may reasonably request.

UNOFFICIAL COPY

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 in a form reasonably acceptable to the City ("Subordination Agreement").

9.9 MBE/WBE, City Residency Hiring And Prevailing Wage Compliance Plan. The Developer and the Developer's general contractor and all major subcontractors shall meet with staff from DCD regarding compliance with the MBE/WBE, prevailing wage, City residency hiring 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.

9.10 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 Street and Alley Vacations. Prior to the Closing Date (unless Developer otherwise agrees) City Council shall have on approved a plat of vacation vacating the streets and alleys located within the City Land which plat shall be recorded on or before the Closing Date. If the street and alley vacation is not completed on or before the Closing Date, the City agrees that it shall be completed within 90-120 days thereafter.

9.12 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 and all deposits returned to the Developer. 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 in accordance with the site plan and other drawings prepared by United Insulated Structures Corp dated April 8, 2009, attached hereto as Exhibit C, which have been approved by DCD and which are incorporated herein by reference (collectively, "Plans").

10.2 Construction. Developer shall construct an approximately 55,248 square foot, one story (other than office space) pre-cast concrete, state of the art, food distribution facility that will include approximately 9,440 square feet of office space, a seven (7) bay receiving dock, fourteen

UNOFFICIAL COPY

(14) customer loading docks as well as forty (40) parking spaces. The pre-cast concrete panels will be accented with contrasting colored panels. The site will be oriented so that customer trucks and larger vehicles will access from South Halsted Street and exit from West Lumber Street and receiving traffic will access via 22nd Place. The Facility will conform to the current City of Chicago Energy Conservation Code. The Facility will have a 10% "green" roof and an "Energy Star" rated system on the remainder of the roof.

10.3 A. 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.

B. Lumber Street / Escrow Agreement. On the Closing Date, the Developer, the City and Title Company shall have executed an Escrow Agreement, substantially in the form attached hereto as Exhibit E. The Developer shall initially deposit into the escrow account an amount equal Three Hundred Thirty Seven Thousand Five Hundred Dollars. The escrow agreement will require the Developer to contribute up to Four Hundred Thousand Dollars (\$400,000.00) (the agreed maximum contribution of Developer towards the expenses incurred as identified in the Escrow Agreement). Unless the parties otherwise mutually agree, at the City's sole option, the City shall use the escrowed funds either:

(i) to pay for or reimburse itself for one hundred percent (100%) of the costs the City incurs for the work that the City performs, or causes to be performed, relating to that portion of West Lumber Street from the west line of South Halsted Street to the west line extended south of the City land, including: roadway reconstruction, installation of street lighting, installation of drainage structures, landscaping as needed, water facility adjustments, mainline sewer work and special waste disposal (the "Lumber Street Improvement Work"); or

(ii) to pay for or reimburse itself for up to fifty hundred percent (50%) of the cost of the Lumber Street Improvement Work relating to that portion of West Lumber Street from the west line of South Halsted Street to the west dead end of West Lumber Street.

10.4 City's Right to Inspect City Land. For the period commencing on the Closing Date and continuing through the date the City issues the Certificate of Completion, any duly authorized representative of the City shall have access to the City Land 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,

UNOFFICIAL COPY

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").

10.5 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. DCD 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. 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.

10.6 Job Covenants. Developer covenants to relocate at least 40 existing full-time or full-time equivalent jobs ("FTE Jobs") to the City Land, as well as two part time jobs, and, within 12 months of the issuance of the Certificate of Completion, to add 12 new FTE Jobs, as well as 6 new part time positions, for a total of 52 FTE jobs. The jobs covenant shall be tested annually starting on the first anniversary date of the Certificate of Completion. In the event that the Developer breaches such jobs covenant at any time during the first five years after the issuance of the Certificate of Completion, the Developer shall pay to the City an amount equal to the product of (a) the number of jobs that the Developer is short of the 52 FTE Job requirement, times (b) \$5,000. Such amount shall be computed and paid annually during the first five years after the issuance of the Certificate of Completion, provided, however, that in no event shall the total payments due for a breach of such job covenant exceed, in aggregate, \$1,822,904.00 (representing the land write-down amount).

For illustrative purposes, if on the first anniversary date the Developer only has 47 FTE Jobs, the Developer shall pay the City the product of (a) 5 (computed as 52-47) times (b) \$5,000, or \$25,000. If on the second anniversary date, the Developer has 52 FTE Jobs, no payment shall be required. If on the third anniversary date, the Developer has 51 FTE Jobs, the Developer shall pay the City the product of (a) 1, times (b) \$5,000, or \$5,000. If on the fourth anniversary date, the Developer has 52 FTE Jobs, no payment shall be required. If prior to the fifth anniversary date, the Developer should cease operations and there should be no jobs on the fifth anniversary date, the Developer shall pay the City the product of (a) 52, times (b) \$5,000, or \$260,000.

The jobs covenant shall only apply during the first five years after the issuance of the Certificate of Completion and shall not apply thereafter.

SECTION 11. LIMITED APPLICABILITY.

Any approval given by DCD 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 Buildings or any other City department; nor does such approval constitute an approval of the

UNOFFICIAL COPY

quality, structural soundness or safety of any improvements located or to be located on the City Land, or the compliance of said improvements with any Laws, private covenants, restrictions of record, or any agreement affecting the City Land or any part thereof.

SECTION 12. COMMENCEMENT AND COMPLETION OF PROJECT.

The Developer shall commence construction of the Project no later than six (6) months following City Council's adopting an ordinance that vacates the public ways located within the boundaries of the City Land (the "Vacation Date"), and shall complete the Project (as evidenced by the issuance of the Certificate of Completion) no later than eighteen months after the Vacation Date; provided, however, DCD, 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 Plans and all Laws and covenants and restrictions of record.

The Commissioner hereby consents to the extension of the construction start date, the completion date,

SECTION 13. CERTIFICATE OF COMPLETION.

The Developer shall request from the City a certificate of completion ("Certificate of Completion") upon the completion of the Project in accordance with this Agreement. Within forty-five (45) days after receipt of a written request by the Developer for a Certificate of Completion, the City shall provide the Developer with either the Certificate of Completion 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 reasonable opinion of the City, for the Developer to take or perform in order to obtain the Certificate of Completion. If the City requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate of Completion upon compliance with the City's response. The 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 Deed with respect to the Developer's obligations to construct the Project. The Certificate of Completion shall not, however, constitute evidence that the Developer has complied with any Laws relating to the construction of the Project, and shall not serve as any "guaranty" as to the quality of the construction.

SECTION 14. RESTRICTIONS ON USE.

The Developer agrees that it:

- (a) Shall devote the City Land to a use that complies with the Redevelopment Plan until the current expiration date of such TIF Area, June 10, 2021; and

UNOFFICIAL COPY

- (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 providing access to or use of the City Land or the Project or any part thereof; and
- (c) Shall use the City Land solely for the construction and development of a food distribution center built pursuant to Sections 10.1, 10.2 and the specifics delineated in Exhibit B; and
- (d) Shall maintain and manage the City Land as a food distribution center; and
- (e) Shall utilize that portion of the City Land comprised of tax parcel identification numbers 17-29-203-004, 17-29-203-005, 17-29-203-006 and 17-29-203-007 solely for parking purposes; no vertical development shall occur on such parcels without the consent of the Commissioner of DCD, which shall be in the Commissioner's sole discretion.

The Developer acknowledges and agrees that the use restrictions set forth in this Section 14 constitute material, bargained-for consideration for the City and are intended to further the public policy of furthering industrial development and job creation, and that, but for such use 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 Certificate of Completion for the Project, the Developer may not, without the prior written consent of DCD, which consent shall be in DCD's 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 DCD 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 Certificate of Completion to anyone other than another principal party, without the prior written consent of DCD, which consent shall be in DCD'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.

UNOFFICIAL COPY

SECTION 16. LIMITATION UPON ENCUMBRANCE OF CITY LAND.

Prior to the issuance of the Certificate of Completion for the Project, the Developer shall not, without DCD's prior written consent, which shall be in DCD'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.

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 City Land prior to the issuance of the 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 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 Certificate of Completion for the Project. The covenant contained in Section 14 shall terminate on the current TIF Area expiration date of June 10, 2021.

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

UNOFFICIAL COPY

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(b), (c) or (g).

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 sixty (60) days after filing.

(c) The Developer fails to complete the Project in accordance with the time line outlined in Section 12 above, unless due to reasons beyond its reasonable control, 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, which change, in the City's reasonable opinion, affects the ability of the Developer to meet its obligations under this Agreement or the Deed.

UNOFFICIAL COPY

(g) The Developer fails to close by the date specified in Section 4, unless DCD, in its sole discretion, extends such date.

(h) The Developer fails to perform, keep or observe any of the other material 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.

19.6 After Closing. If an Event of Default occurs after the Closing but prior to the issuance of the Certificate of Completion for the Project, 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 reversion 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 DCD, and otherwise comply with the covenants that run with the land as specified in Section 18.

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

UNOFFICIAL COPY

(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.

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.

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

UNOFFICIAL COPY

the City Land in its “as is,” “where is” and “with all faults” condition. Notwithstanding the foregoing, the City agrees to make all necessary repairs to the sewer system that runs along 23rd street prior to Closing, or within 60 days thereafter.

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 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 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 or 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.

UNOFFICIAL COPY

22.4 Developer agrees to be responsible for costs associated with the site condition and environmental condition of the City Land and subject to Section 7 hereof agrees to be required to enroll the site in the SRP. Such costs may include, but are not limited to, the following:

- (a) Soil/groundwater sampling, reporting and coordination for the SRP.
- (b) Additional disposal costs for soil and groundwater due to contamination associated with historic operations.
- (c) Permitting and fees associated with the disposal of hazardous waste (material that meets the RCRA definition of such material).
- (d) Environmental sampling associated with the SRP.
- (e) Installation of engineered barriers which are beyond typical building and parking lot construction and are specifically required to meet SRP standards.
- (f) Disposal costs of excess soil associated with normal construction activities due to geotechnically unsuitable material or balance excess.
- (g) Permitting, handling and disposal of excess water generated by precipitation or groundwater in open excavations during construction.
- (h) Sampling costs associated with potential fill sources.
- (i) Geotechnical or land survey costs.
- (j) Professional environmental oversight during construction activities, including any construction related OSHA requirements.

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

UNOFFICIAL COPY

“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 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.

UNOFFICIAL COPY

- (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.
- (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 DCD 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, DCD, 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 DCD, 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)

UNOFFICIAL COPY

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.

(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, as set forth in Exhibit D hereto (the "MBE/WBE Budget") shall be expended for contract participation by minority-owned businesses and

UNOFFICIAL COPY

at least 4% of the MBE/WBE Budget 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 business enterprise, related to the Procurement Program or the Construction Program, as applicable.

(d) 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 DCD.

(e) 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

UNOFFICIAL COPY

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.

(f) 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.

(g) 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 DCD 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

UNOFFICIAL COPY

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 corporation 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.
- (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.

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

UNOFFICIAL COPY

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 Community Development
 121 North La Salle Street, Room 1006
 Chicago, Illinois 60602
 Attn: Commissioner
 Fax: (312) 744-5826

With a copy to: City of Chicago
 Department of Law
 121 North La Salle Street, Suite 600
 Chicago, Illinois 60602
 Attn: Real Estate and Land Use Division
 Fax: (312) 742-0277

If to the Developer: Truong Enterprises, Inc.
 2550 South Leavitt Street
 Chicago, Illinois 60608
 Attn: Tu Luu
 Fax: (312) 568-5212

With a copy to: William Walker
 200 West Adams Street
 Suite 2500
 Chicago, Illinois 60606
 Fax: (312) 346-2325

UNOFFICIAL COPY

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

UNOFFICIAL COPY

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

UNOFFICIAL COPY

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, 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 s (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.

UNOFFICIAL COPY

- (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;
 - (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. OFFICES OF INSPECTOR GENERAL, LEGISLATIVE INSPECTOR GENERAL AND COMPLIANCE.

It is the duty of every officer, employee, department, agency, contractor, subcontractor, developer and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. The Developer understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

In accordance with Chapter 2-26-010 et seq. of the Municipal Code of Chicago, the Developer acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with respect to the Agreement, including, without limitation, making available to the Executive Director the department's premises, equipment, personnel, books, records and papers. The Developer shall abide by the provisions of Chapter 2-26-010 et seq.

SECTION 30. FAILURE TO MAINTAIN ELIGIBILITY TO DO BUSINESS WITH THE CITY.

Failure by the Borrower or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-010 of the Municipal Code of Chicago shall be grounds for termination of the Loan documents and the transaction contemplated thereby. Borrower shall at all times comply with Section of 2-154-020 of the Municipal Code of Chicago.

UNOFFICIAL COPY

SECTION 31. MISCELLANEOUS.

The following general provisions govern this Agreement:

31.1 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.

31.2 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.

31.3 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.

31.4 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 benefitted by such term.

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

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

31.7 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.

31.8 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.

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

UNOFFICIAL COPY

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

31.10 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.

31.11 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. The parties acknowledge and agree that title to the City Land shall be taken by Halsted-Lumber Street, LLC as assignee of Developer, but such assignment shall not relieve Developer of any obligations under this Agreement.

(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: 

Andrew N. Mooney
Acting Commissioner
Department of Community Development

TRUONG ENTERPRISES, INC., an Illinois corporation

By: _____

Name: _____

Its: _____

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

Marc J. Gaynes
Assistant Corporation Counsel
City of Chicago
121 North La Salle Street, Suite 600
Chicago, Illinois 60602
(312) 744-1807

Property of Cook County Clerk's Office

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: _____

Andrew M. Mooney
Acting Commissioner
Department of Community Development

TRUONG ENTERPRISES, INC., an Illinois corporation

By: 

Name: HIEU TRUONG

Its: PRESIDENT

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

Marc J. Gaynes
Assistant Corporation Counsel
City of Chicago
121 North La Salle Street, Suite 600
Chicago, Illinois 60602
(312) 744-1807

UNOFFICIAL COPY

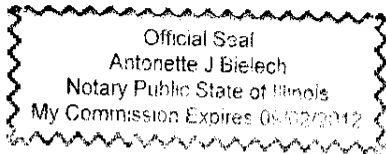
STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Andrew J. Mooney, the Acting Commissioner of the Department of Community 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 Acting Commissioner, he signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as his 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 21st day of December, 2010.

Antonette J. Bielech

 NOTARY PUBLIC



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF CITY LAND

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENTS)

LOTS 1 TO 15, BOTH INCLUSIVE, AND LOTS 20 TO 24, BOTH INCLUSIVE, TOGETHER WITH THE NORTH-SOUTH VACATED 10.75 FOOT ALLEY WHICH LIES WEST OF AND ADJOINING SAID LOTS 1 TO 5, BOTH INCLUSIVE, AND WHICH LIES EAST OF AND ADJOINING SAID LOT 24 IN BLOCK 2 IN THOMAS O'NEIL'S ADDITION TO CHICAGO, (SAID ALLEY VACATED BY ORDINANCE RECORDED AS DOCUMENT NUMBER 18466262), AND THE NORTH-SOUTH VACATED 10.75 FOOT ALLEY WHICH LIES EAST OF AND ADJOINING SAID LOT 11, TOGETHER WITH THE EAST-WEST VACATED 20 FOOT ALLEY WHICH LIES NORTH OF AND ADJOINING SAID LOT 6, EXTENDED WEST, AND WHICH LIES NORTH OF AND ADJOINING SAID LOTS 11 TO 15, BOTH INCLUSIVE, IN THE SUBDIVISION OF THE EAST 8.36 ACRES OF THE NORTHEAST FRACTIONAL $\frac{1}{4}$ OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

ALSO

LOTS 1 TO 10, BOTH INCLUSIVE, AND LOTS 15 TO 19, BOTH INCLUSIVE, TOGETHER WITH THE EAST-WEST VACATED 66 FOOT STREET WHICH LIES NORTH OF AND ADJOINING SAID LOT 6, EXTENDED WEST, AND WHICH LIES NORTH OF AND ADJOINING SAID LOTS 15 TO 19, BOTH INCLUSIVE, AND THE NORTH-SOUTH VACATED 10.75 FOOT ALLEY WHICH LIES WEST OF AND ADJOINING SAID LOTS 1 TO 5, BOTH INCLUSIVE, AND ALSO THE EAST-WEST VACATED EAST 20 FOOT ALLEY WHICH LIES NORTH OF AND ADJOINING SAID LOTS 6 TO 10, BOTH INCLUSIVE, IN BLOCK 3 IN THOMAS O'NEIL'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST 8.36 ACRES OF THE NORTHEAST FRACTIONAL $\frac{1}{4}$ OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

said parcel containing 118,238.5 square feet (2.714 acres) of land, more or less.

Common address: 2234-2310 South Halsted Street

Chicago, Illinois 60608

UNOFFICIAL COPY

PINs: 17-29-202-010

17-29-202-011

17-29-202-012

17-29-202-013

17-29-202-029

17-29-202-030

17-29-202-031

17-29-202-032

PART OF 17-29-202-033 (lot 20)

17-29-202-034

PART OF 17-29-202-033 (lots 11 to 15)

17-29-203-004

17-29-203-005

17-29-203-006

17-29-203-007

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

NARRATIVE DESCRIPTION OF PROJECT

The Developer shall construct an approximately 55,248 square foot, one-story (other than the offices) pre-cast concrete, state of the art, food distribution facility that will include approximately 9,440 square feet of office space, a seven (7) bay receiving dock, fourteen (14) customer loading docks as well as forty (40) parking spaces. The pre-cast concrete panels will be accented with contrasting colored panels. The site will be oriented so that customer trucks and larger vehicles will access the Facility from South Halsted Street and exit from West Lumber Street. Receiving will be via 22nd Place. The Facility will conform to the current City of Chicago Energy Conservation Code. The Facility will have a 10% "green" roof and an "Energy Star" rated system on the remainder of the roof.

The Developer will act as the development entity which will manage the development process and own the building. Upon completion, the Developer will occupy the facility.

UNOFFICIAL COPY

EXHIBIT C

PLANS

[attached]

Property of Cook County Clerk's Office

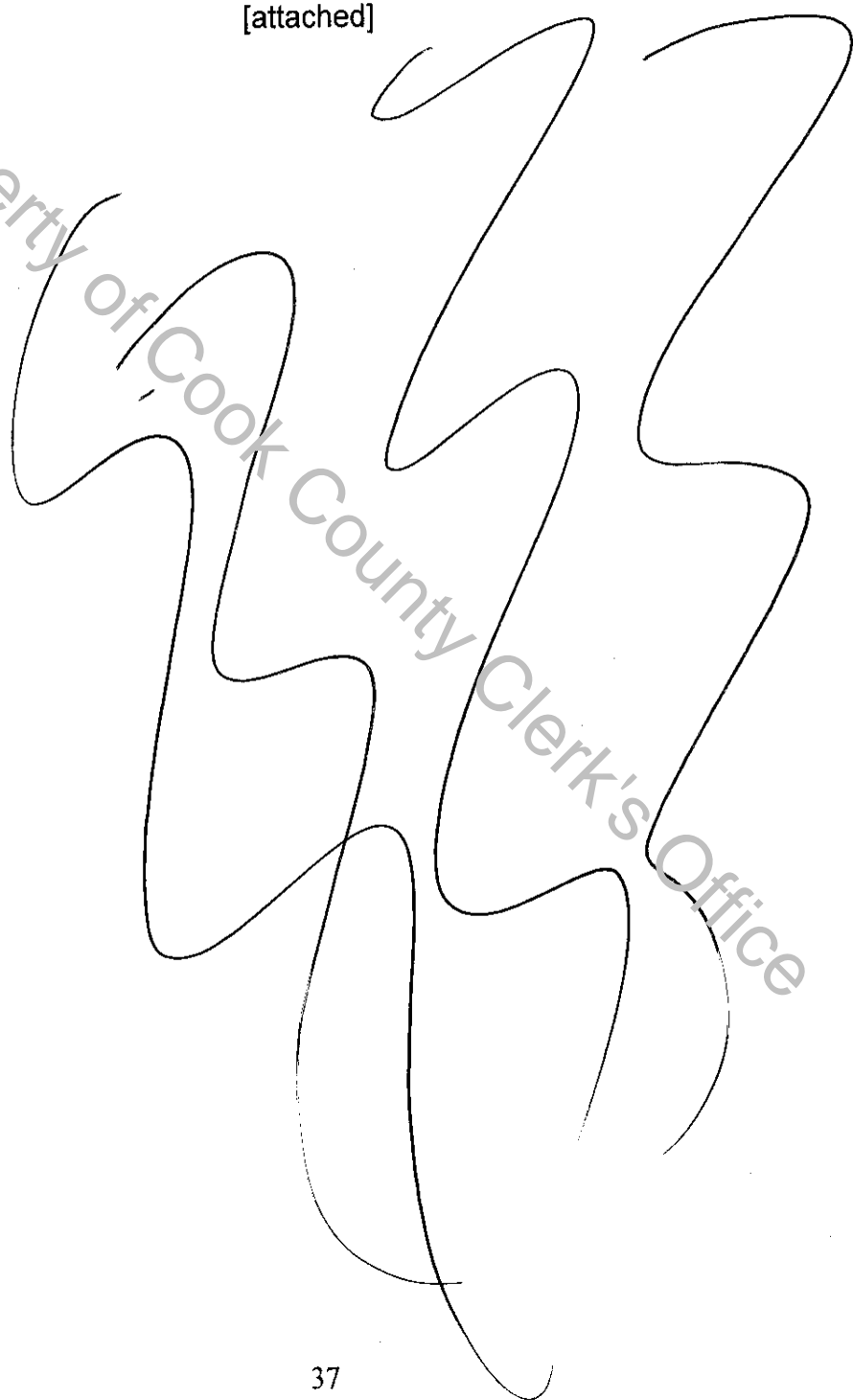
UNOFFICIAL COPY

EXHIBIT D

MBE/WBE BUDGET

[attached]

Property of Cook County Clerk's Office

A large, complex handwritten scribble in black ink, consisting of multiple overlapping loops and lines, covering a significant portion of the page. It appears to be a signature or a mark that has been written over the document.

UNOFFICIAL COPY

EXHIBIT E

FORM OF ESCROW AGREEMENT

[attached]

Property of Cook County Clerk's Office

A large, stylized handwritten scribble or signature in black ink, consisting of several overlapping loops and curves, positioned diagonally across the center of the page.

UNOFFICIAL COPY

ESCROW AGREEMENT

This Escrow Agreement, dated as of December _____, 2010 (the "**Closing Date**"), between and among **Halsted-Lumber Street, LLC** an Illinois limited liability company ("**HL**") as assignee of **Truong Enterprises, Inc.**, an Illinois corporation ("**Developer**"), whose offices are located at 2550 South Leavitt Street, Chicago, Illinois 60608, having its offices at 2550 South Leavitt Street, Chicago, Illinois 60608, the **CITY OF CHICAGO**, an Illinois municipal corporation ("**City**"), acting by and through its Department of Community Development ("**DCD**"), having its principal offices at City Hall, 121 North La Salle Street, Chicago, Illinois 60602 and Greater Illinois Title Company, having its principal offices at 120 N. LaSalle Street , Suite 900, Chicago, Illinois 60602 as escrow agent ("**Escrow Agent**").

This is the Escrow Agreement referred to in Agreement for the Sale and Redevelopment of Land in Section 10.3 (B) between Developer and the City dated of even date herewith (the "**RDA**"), pursuant to which the Developer assigned its interest to HL. Capitalized terms used in this agreement without definition shall have the respective meanings given to them in the RDA.

The parties, intending to be legally bound, hereby agree as follows:

1. ESTABLISHMENT OF ESCROW

(a) HL is depositing with Escrow Agent an amount equal to Three Hundred Thirty-Seven Thousand Five Hundred and no/100 Dollars (\$337,500.00) in immediately available funds (as increased by any earnings thereon, if any, and as reduced by any disbursements, amounts withdrawn, or losses on investments, the "**Escrow Fund**").

(b) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Escrow Fund pursuant to the terms and conditions hereof. If more than one party is serving as Escrow Agent, all actions shall be taken jointly.

2. INVESTMENT OF FUNDS

Except as HL and City may from time to time jointly instruct Escrow Agent in writing, the Escrow Fund shall be held from time to time, in a deposit account with Escrow Agent, without interest, until disbursement of the entire Escrow Fund. Escrow Agent is authorized to liquidate in accordance with its customary procedures any portion of the Escrow Fund consisting of investments to provide for payments required to be made under this Agreement.

3. DISTRIBUTIONS

The Escrow Fund shall be distributed by Escrow Agent only upon the first to occur of:

(a) upon receipt of a written direction jointly executed by HL and City, or their legal

UNOFFICIAL COPY

representatives, successors or assigns (a **“Joint Direction”**), as set forth in the Joint Direction; or (b) in obedience to any writs, orders, judgments or decrees entered or issued by any court (a **“Court Order”**). HL and City agree to provide such written directions promptly and in accordance with the RDA.

4. TERMINATION OF ESCROW

This Escrow Agreement shall terminate upon the distribution of the entire amount of the Escrow Fund as provided herein.

5. DUTIES OF ESCROW AGENT

(a) Escrow Agent shall not be under any duty to give the Escrow Fund held by it hereunder any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder except as directed in this Agreement. Uninvested funds held hereunder shall not earn or accrue interest.

(b) Escrow Agent shall not be liable, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against Escrow Agent, HL and City hereto shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its gross negligence or willful misconduct) in the investment or reinvestment of the Escrow Fund, or any loss of interest incident to any such delays.

(c) Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. Escrow Agent may conclusively presume that the undersigned representative of any party hereto which is an entity other than a natural person has full power and authority to instruct Escrow Agent on behalf of that party unless written notice to the contrary is delivered to Escrow Agent.

(d) Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice.

UNOFFICIAL COPY

(e) Escrow Agent does not have any interest in the Escrow Fund deposited hereunder but is serving as escrow holder only and having only possession thereof. Any payments of income from this Escrow Fund shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide Escrow Agent with appropriate Internal Revenue Service Forms W-9 for tax identification number certification, or non-resident alien certifications. This Section 5(e) and Section 5(b) shall survive notwithstanding any termination of this Agreement or the resignation of Escrow Agent.

(f) Any Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Escrow Fund to any successor Escrow Agent jointly selected by HL and DCD in writing, or to any court of competent jurisdiction, whereupon Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of Escrow Agent will take effect on the earlier of (a) the appointment of a successor (including a court of competent jurisdiction) or (b) the day which is 30 days after the date of delivery of its written notice of resignation to the other parties hereto. If at that time Escrow Agent has not received a designation of a successor Escrow Agent, Escrow Agent's sole responsibility after that time shall be to retain and safeguard the Escrow Fund until delivery thereof to an appropriate clerk of the court, receipt of a designation of successor Escrow Agent or a joint written disposition instruction by the other parties hereto, or a final non-appealable order of a court of competent jurisdiction.

(g) Escrow Agent shall receive no compensation for the services to be rendered by Escrow Agent hereunder but HL and DCD each hereby agree to reimburse Escrow Agent for 50% of all reasonable and actual expenses, disbursements and advances incurred or made by Escrow Agent in performance of its duties hereunder (including reasonable fees, expenses and disbursements of its counsel).

6. LIMITED RESPONSIBILITY

This Agreement expressly sets forth all the duties of Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for any other person or entity referenced herein.

7. OWNERSHIP FOR TAX PURPOSES

The parties agree that, for purposes of federal and other taxes based on income, each party that receives any portion of the Escrow Funds shall be treated as the owner of that portion of the Escrow Fund with respect to all income, if any, that is earned on, or derived from, the Escrow Fund.

UNOFFICIAL COPY**8. NOTICES**

All notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt) provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

If to HL: Halsted-Lumber Street, LLC
2550 South Leavitt Street
Chicago, Il. 60608
Attn: Tu Luu

With a copy to:

Nisen & Elliott, LLC
200 W. Adams, suite 2500
Chicago, Il. 60606
Attention: William A. Walker

If to the City:

City of Chicago
Department of Community Development
121 North La Salle Street, Room 1000
Chicago, Illinois 60602
Attn: Commissioner
Fax: (312) 744-5826

With a copy to:

City of Chicago
Department of Law
121 North La Salle Street, Suite 600
Chicago, Illinois 60602
Attn: Real Estate and Land Use Division
Fax: (312) 742-0277

If to Escrow Agent:

Greater Illinois Title Company
120 N. LaSalle Street, suite 900
Chicago, Il. 60602
Attn: _____

UNOFFICIAL COPY

9. JURISDICTION; SERVICE OF PROCESS

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Illinois, County of Cook, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Illinois, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

10. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same.

11. WAIVER

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

12. EXCLUSIVE AGREEMENT AND MODIFICATION

This Agreement supersedes all prior agreements among the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by HL, DCD and Escrow Agent.

UNOFFICIAL COPY

13. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Halsted- Lumber Street, LLC, an Illinois limited liability company

By: _____

Its: _____

City of Chicago, an Illinois municipal corporation

Andrew J. Mooney

Acting Commissioner, Department of Community Development

Greater Illinois Title Company

By: _____

Its: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Andrew M. Mooney, the Acting Commissioner of the Department of Community 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 Acting Commissioner, he signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as his 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 ____ day of December, 2010.

NOTARY PUBLIC

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the Manager of **Halsted- Lumber Street, LLC**, an Illinois municipal Illinois limited liability company, 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 Manager, s/he signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this ____ day of December, 2010.

 NOTARY PUBLIC

Notary of Cook County Clerk's Office