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Karen A. Yarbrough
Cook County Recorder of Deeds
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This agreement was prepared by and
after recording return to:
Keith A. May, Esq.
City of Chicago Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

HISTORIC STRAND REDEVELOPMENT AGREEMENT

This Historic Strand Redevelopment Agreement (this "**Agreement**") is made as of this 30th day of September, 2014, by and among the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), and Historic Strand, LP, an Illinois limited partnership (the "**Partnership**"), Holsten Real Estate Development Corporation, an Illinois corporation ("**Holsten**"), and Holsten Human Capital Development, NFP, an Illinois not-for-profit corporation ("**HHCD**").

RECITALS

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

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

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on January 20, 1999: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Woodlawn Redevelopment Project Area"; (2) "An Ordinance of the City of Chicago, Illinois Designating the Woodlawn Redevelopment Project Area as a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act"; and (3) "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for Woodlawn Redevelopment Project Area" (the "**TIF Adoption Ordinance**") (items(1)-(3) collectively referred to herein as the "**TIF Ordinances**"). The redevelopment project area referred to above (the "**Redevelopment Area**") is legally described in Exhibit A hereto.

Pursuant to an ordinance adopted by the City Council of the City on September 10, 2014 (the "**Project Ordinance**") the City has authorized the Commissioner of DPD to execute and deliver this Agreement.

D. The Project: The Partnership will purchase, rehabilitate and renovate the approximately 82,758 square foot former historic Strand Hotel, now vacant, located at 6315 South

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Cottage Grove Avenue, Chicago, Illinois into a mixed-use commercial and residential building (the "**Building**"). In addition, the Partnership will purchase an adjacent vacant property located at 6314 South Maryland Avenue, Chicago, Illinois for the development of a surface parking lot consisting of twenty-eight (28) parking spaces, including two (2) that will be accessible spaces (the "**Parking Lot**"). The Building and Parking Lot are located within the Redevelopment Area and legally described on Exhibit B hereto (the "**Property**"). Both the Building and the Parking Lot are owned by the City and will be purchased by HHCD or an affiliate thereof through a negotiated sale and transferred to the Partnership.

The Building will be a five-story building containing sixty-three (63) residential units and three (3) commercial units on the ground floor. There will be sixty-two (62) residential units on the second through fifth floors and one (1) residential unit for the on-site Building manager. There will be forty-six (46) spaces for bicycle parking located in the Building and two (2) exterior bicycle parking spaces. Of the sixty-three (63) housing units, fifty-three shall be for households earning no more than sixty percent (60%) of the area median income. These affordable units will satisfy the Chicago Affordable Requirements Ordinance, which requires ten percent (10%) of the total units to be affordable in projects developed on land sold by the City or twenty percent (20%) of the units in projects receiving tax increment financing assistance.

The Building was constructed in 1915 and was listed on National Register of Historic Places on January 29, 2013. The historic architectural features of the Building include the facade and interior lobby and public spaces, which are largely intact. The historic preservation of the Building, the creation of affordable housing for residents of the City, and the return of the tax-exempt Property to the tax rolls will create a substantial public benefit in the City.

The construction of the Building and Parking Lot (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) is referred to herein as the "**Project**." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

It is anticipated that approximately seventy-five (75) temporary full-time-equivalent construction jobs will be created during the construction of the Project. In addition, the environmental features of the Project will include permeable pavers and rain barrels, and the Building will meet the City's "Energy Star" rating requirements.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago Woodlawn Redevelopment Project Area Tax-Increment Financing Program Redevelopment Plan (the "**Redevelopment Plan**") included in the TIF Adoption Ordinance published at pages 87763 through 87845, inclusive, of the Journal of the Proceedings of the City Council.

F. City Financing: The City agrees to use, in the amounts set forth in Section 4.03 hereof, Available Incremental Taxes (as defined below), to pay for or reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement.

In addition, the City may, in its discretion, issue tax increment allocation bonds ("TIF Bonds") secured by Incremental Taxes pursuant to a TIF bond ordinance (the "TIF Bond Ordinance") at a later date as described in Section 4.03(c) hereof, the proceeds of which (the "TIF Bond Proceeds") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from

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Available Incremental Taxes or in order to reimburse the City for the costs of TIF-Funded Improvements.

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

SECTION 1. RECITALS, HEADINGS AND EXHIBITS

The foregoing recitals are hereby incorporated into this Agreement by reference. The paragraph and section headings contained in this Agreement, including without limitation those set forth in the following table of contents, are for convenience only and are not intended to limit, vary, define or expand the content thereof. Developer agrees to comply with the requirements set forth in the following exhibits which are attached to and made a part of this Agreement. All provisions listed in the Exhibits have the same force and effect as if they had been listed in the body of this Agreement.

Table of Contents	List of Exhibits
1. Recitals, Headings and Exhibits	A *Redevelopment Area
2. Definitions	B *Property
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4. Financing	D Construction Contract
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6. Agreements with Contractors	F-1 *Project Budget
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9. Covenants/Representations/Warranties of the City	H Opinion of Developer's Counsel
10. Developer's Employment Obligations	I Subordination Agreement
11. Environmental Matters	J Form of Payment and Performance Bond
12. Insurance	K Requisition Form
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14. Maintaining Records/Right to Inspect	(An asterisk (*) indicates which exhibits are to be recorded.)
15. Defaults and Remedies	
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SECTION 2. DEFINITIONS

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

"Act" shall have the meaning set forth in the Recitals hereof.

"Actual Residents of the City" shall mean persons domiciled within the City.

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

"AMI" shall mean Chicago-area median income, adjusted for family (as defined in 24 C.F.R. Part 5.403) size, as determined from time to time by HUD.

"Annual Compliance Report" shall mean a signed report from the Partnership to the City, including but not limited to, (a) itemizing each of the Developer's obligations under the RDA during the preceding calendar year, (b) certifying the Developer's compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that the Developer is not in default with respect to any provision of the RDA, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) compliance with the Operating Covenant (**Section 8.06**), (2) delivery of Financial Statements and unaudited financial statements (**Section 8.13**), (3) delivery of updated insurance certificates, if applicable (**Section 8.14**), (4) delivery of evidence of payment of Non-Governmental Charges, if applicable (**Section 8.15**), and (5) compliance with all other executory provisions of this Agreement.

"Available Incremental Taxes" shall mean, for each payment, an amount equal to the Incremental Taxes on deposit in the Woodlawn Redevelopment Project Area TIF Fund as of December 31st of the calendar year prior to the year in which the Requisition Form for such payment is received by the City, and which are available for the financing or payment of Redevelopment Project Costs, after deducting (i) the 10.0% City Fee, (ii) all Incremental Taxes from a New Project pledged or allocated to assist the New Project, (iii) all Incremental Taxes previously allocated or pledged by the City before the date of this Agreement including, without limitation, (A) Incremental Taxes allocated or pledged to MSAC South Shore High School; (B) Incremental Taxes allocated or pledged to Chicago Public Schools ADA; (C) Incremental Taxes allocated or pledged to the the Chicago Park District's Harris Park project; (D) Incremental Taxes allocated or pledged to the Woodlawn Health Center, and (iv) debt service payments with respect to the Bonds, if any.

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

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

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

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

"City" shall have the meaning set forth in the Recitals hereof.

"City Council" shall have the meaning set forth in the Recitals hereof.

"City Fee" shall mean the fee described in **Section 4.05(c)** hereof

"City Funds" shall mean a maximum of \$2,000,000 from Available Incremental Taxes to be paid to the Partnership for reimbursement of TIF-Funded Improvements.

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"Closing Date" shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

"Compliance Period" shall have the meaning set forth in **Section 8.06** hereof.

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

"Construction Lender" shall mean Citibank, N.A.

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

"Developer" shall mean, collectively, the Partnership, Holsten and HHCD.

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

"Employment Plan" shall have the meaning set forth in **Section 4.03(f)** hereof.

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

"Equity" shall mean funds of the Partnership (other than funds derived from Lender Financing) available for the Project, in the amount set forth in **Section 4.01** hereof which amount may be increased pursuant to **Section 4.06** (Cost Overruns) and **Section 4.03(h)**.

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

"Existing Materials" shall mean the Hazardous Materials and other environmental conditions described in any SRP reports existing on the Property prior to or as of the Closing Date.

"Final Project Cost" shall have the meaning set forth in **Section 7.01** hereof.

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

"General Contractor" shall mean Linn-Mathes, Inc., the general contractor(s) selected and hired by the Partnership pursuant to **Section 6.01** and approved by DPD.

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

"Human Rights Ordinance" shall have the meaning set forth in Section 10 hereof.

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the Woodlawn TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

"Incremental Taxes From a New Project" shall mean (a) individually, Incremental Taxes generated by the equalized assessed value ("**EAV**") of the parcel(s) comprising a New Project over and above the initial EAV of such affected parcel(s) as certified by the Cook County Clerk in the certified initial EAV of all tax parcels in the Redevelopment Area and (b) collectively, the sum of Incremental Taxes From a New Project for all New Projects, if there are multiple New Projects.

"Indemnitees" shall have the meaning set forth in Section 13.01 hereof.

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

"Limited Partner" shall mean Alliant Capital, LTD. or an affiliate thereof.

"MBE(s)" 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.

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

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

"New Project" shall mean a development project (a) for which the related redevelopment agreement is recorded on or after the date of this Agreement and (b) which will receive assistance in the form of Incremental Taxes; provided, however, that "New Project" shall not include any development project that is or will be exempt from the payment of ad valorem property taxes.

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

"Operating Covenant" shall have the meaning set forth in Section 8.06 hereof.

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

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“Permitted Mortgage” shall have the meaning set forth in **Section 16** hereof.

“Planned Development” shall mean that certain Planned Development authorized by the City Council on March 5, 2014 and published at pages 76293 through 76307 in the Journal of the Proceedings of the City Council of such date.

“Plans and Specifications” shall mean construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

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

“Project” shall have the meaning set forth in the Recitals hereof.

“Project Budget” shall mean the budget attached hereto as **Exhibit F-1**, showing the total cost of the Project by line item, furnished by the Partnership to DPD, in accordance with **Section 3.03** hereof.

“Property” shall have the meaning set forth in the Recitals hereof.

“Redevelopment Area” shall have the meaning set forth in the Recitals hereof.

“Redevelopment Plan” shall have the meaning set forth in the Recitals hereof.

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

“Requisition Form” shall mean the document, in the form attached hereto as **Exhibit K**, to be delivered by the Partnership to DPD pursuant to **Section 4.04** of this Agreement.

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

“Subordination Agreement” shall mean the document, in substantially the form attached hereto as **Exhibit J**, to be executed pursuant to **Section 5.04** of this Agreement.

“Survey” shall mean a plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property, meeting the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, effective February 23, 2011, dated within 75 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the completion of the Project as required by the City or Lender(s) providing Lender Financing).

“Term of the Agreement” shall mean the period of time commencing on the Closing Date and concluding at the end of the Compliance Period.

“TIF Adoption Ordinance” shall have the meaning set forth in the Recitals hereof.

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

"TIF Ordinances" shall have the meaning set forth in the Recitals hereof.

"Title Company" shall mean Greater Illinois Title Company, as agent for Chicago Title Insurance Company.

"Title Policy" shall mean an owner's title insurance policy in the most recently revised ALTA or equivalent form, showing the Partnership as the insured, noting the recording of this Agreement as an encumbrance against the Property and, a subordination agreement in favor of the City with respect to previously recorded liens against the Property, if any, related to Lender Financing, if any, issued by the Title Company, and containing only those title exceptions listed as Permitted Liens on **Exhibit E** hereto.

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

"WBE(s)" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's 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.

"Woodlawn TIF Fund" shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Project, the Partnership shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof, commence the Project no later than November 30, 2014 and complete the Project and commence operations therein no later than December 31, 2015, or such later date as to which DPD may consent. The Partnership shall be bound by the Operating Covenant and other obligations and deadlines described in **Section 8.06** and elsewhere in this Agreement.

3.02 Scope Drawings and Plans and Specifications. The Partnership has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan, the Planned Development and all applicable federal, state and local laws, ordinances and regulations. The Partnership shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budget. The Partnership has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than Twenty-Two Million

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Eight Hundred Forty-Nine Thousand and Five Hundred Twenty-Eight Dollars (\$22,849,528). The Partnership hereby certifies to the City that (a) the City Funds, together with Lender Financing and Equity described in **Section 4.02** hereof, shall be sufficient to complete the Project and (b) to the best of Partnership's knowledge, the Project Budget is true, correct and complete in all material respects. The Partnership shall promptly deliver to DPD copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

3.04 Change Orders. All Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to changes to the Project must be submitted by the Partnership to DPD. The Partnership shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Partnership of DPD's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Partnership.

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

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

3.07 Progress Reports. The Partnership shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**).

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

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

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3.10 Signs and Public Relations. The Partnership shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Partnership, the Property and the Project in the City's promotional literature and communications.

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be Twenty-Two Million Eight Hundred Forty-Nine Thousand and Five Hundred Twenty-Eight Dollars (\$22,849,528) to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

<u>Sources</u>	<u>Amount</u>
Equity (subject to Sections 4.03(b) and 4.06)	\$15,773,040
LIHTC (\$12,403,829)	
HTC (\$3,369,210)	
HOME Loan from City	\$ 4,658,111
City Funds	\$ 2,000,000
General Partner Equity	\$ 100
IAHTC from City	\$ 289,488
DCEO Grant	\$ 128,790
Estimated Total	<u>\$22,849,528</u>

During construction of the Project, the Partnership will secure a construction loan of an amount not to exceed \$13,500,000, which will be paid off by Equity and City Funds. A maximum of \$1,000,000 of City Funds will be provided during construction with the remainder being provided upon the issuance of the Certificate, as provided in **Section 4.03**.

4.02 Developer Funds. Equity and/or Lender Financing may be used to pay any Project cost, including but not limited to Redevelopment Project Costs.

4.03 City Funds.

(a) **Uses of City Funds.** City Funds may only be used to pay down the Construction Loan or to directly or reimburse the Developer. The City Funds will be paid to Holsten, which will then either loan or contribute the City Funds to the Partnership for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b) and 4.05(d)**), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost.

(b) **Sources of City Funds.** Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to provide City funds from the sources and in the amounts described directly below (the "City Funds") to pay for or reimburse the Developer for the costs of the TIF-Funded Improvements:

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<u>Source of City Funds</u>	<u>Maximum Amount</u>
Available Incremental Taxes and/or TIF Bond Proceeds	\$2,000,000

provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed the lesser of Two Million Dollars (\$2,000,000) or 8.753% of the actual total Project costs; and provided further, that the \$2,000,000 to be derived from Available Incremental Taxes and/or TIF Bond proceeds, if any, shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as:

(i) The amount of the Available Incremental Taxes deposited into the Woodlawn TIF Fund shall be sufficient to pay for such costs; or

(ii) The City has been reimbursed from Available Incremental Taxes for the amount previously disbursed by the City for TIF-Funded Improvements; or

(iii) The City agrees to issue TIF Bonds pursuant to, and subject to the conditions set forth in, Section 4.03(c).

The Developer acknowledges and agrees that the City's obligation to pay for TIF-Funded Improvements up to a maximum of \$2,000,000 is contingent upon the fulfillment of the conditions set forth in parts (i), (ii), and (iii) above. In the event that such conditions are not fulfilled, the amount of Equity to be contributed by the Developer pursuant to Section 4.01 hereof shall increase proportionately.

Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to reimburse the Developer with City Funds in the form of a \$1,000,000 payment when a minimum of 50% of the Project Budget has been expended by the Developer. A second \$1,000,000 payment of City Funds will be made upon issuance of the Certificate. The first payment of City Funds is subject to certification of at least \$1,000,000 in TIF-eligible costs paid by the Developer and approved by the City. In addition, the second payment is subject to certification of at least an additional \$1,000,000 in TIF-eligible costs paid by the Developer but approved by the City prior to the Completion Date.

The Developer shall have priority for Available Incremental Taxes ahead of all projects **EXCEPT** for the following projects approved prior to the adoption of the Project Ordinance: [List to be inserted at Closing]

(c) TIF Bonds.

(i) The Commissioner of DPD and the Comptroller, in their sole discretion, may agree upon the request of the Developer to recommend that the City Council approve an ordinance or ordinances authorizing the issuance of TIF Bonds in an amount which, in the opinion of the Comptroller, is marketable under the then current market conditions; provided, however, that if, in the opinion of the Comptroller, there is an insufficient market for such TIF Bonds or if the issuance of such TIF Bonds would adversely affect the City's credit rating or in any other way adversely affect City finances, such officials will not be required to recommend approval of such ordinance(s). The Developer will cooperate with the City in the issuance of TIF Bonds, as provided in Section 8.05 hereof.

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(ii) Prior to the submission of any such ordinance for approval by the City Council, the Developer shall agree to pay the costs of issuing such TIF Bonds attributable to the provision of City Funds under this Agreement including but not limited to bond counsel fees, underwriters' fees and consultants' fees, and shall identify its source of funding with respect thereto.

4.04 Requisition Form.

(a) When the Developer submits documentation to the City in connection with a request for the payment of the City Funds as described in Section 4.03, the Developer shall provide DPD with a Requisition Form.

(b) Prior to each execution of a Requisition Form, the Developer shall submit documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its sole discretion. Delivery by the Developer to DPD of any Requisition Form hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such execution of the Requisition Form, that:

(i) the total amount of the request for reimbursement represents the actual amount paid to the General Contractor and/or subcontractors who have performed work on the Project, and/or their payees;

(ii) all amounts shown as previous payments on the current Requisition Form have been paid to the parties entitled to such payment;

(iii) the Developer has approved all work and materials for the current Requisition Form, and such work and materials conform to the Plans and Specifications;

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

(v) the Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property which have not been bonded, except for the Permitted Liens;

(vi) to best of Developer's knowledge, no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(vii) the Project is In Balance. The Project shall be deemed to be in balance ("**In Balance**") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "**Available Project Funds**" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any acceptance of a Requisition Form by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and

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correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer. The Developer shall meet with DPD, if requested, to discuss any Requisition Form previously delivered.

4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

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

(b) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of DPD, being prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$25,000 or \$100,000 in the aggregate, may be made without the prior written consent of DPD.

(c) City Fee. Annually, the City may allocate an amount not to exceed ten percent (10%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, but the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

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

4.07 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed as provided in **Section 15.02** hereof.

SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

5.01 Project Budget. The Partnership has submitted to DPD, and DPD has approved, a Project Budget in accordance with the provisions of **Section 3.03** hereof.

5.02 Scope Drawings and Plans and Specifications. The Partnership has submitted to DPD, and DPD has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of **Section 3.02** hereof.

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5.03 Other Governmental Approvals. The Partnership has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD.

5.04 Financing. The Partnership has furnished proof reasonably acceptable to the City that the Partnership has Equity, Lender Financing and all other sources of funds in the amounts set forth in **Section 4.01** hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Partnership has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Partnership as needed and are sufficient (along with the Equity set forth in **Section 4.01**) to complete the Project. The Partnership has delivered to DPD a copy of the construction escrow agreement, if any, entered into by the Partnership regarding the Lender Financing. Any liens against the Property or Project related to Lender Financing in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein in **Sections 8.02 and 8.06** pursuant to a Subordination Agreement executed on or prior to the Closing Date, which is to be recorded, at the expense of the Partnership, with the Office of the Recorder of Deeds of Cook County.

5.05 Ownership and Title. On the Closing Date, the Partnership has furnished the City with a copy of the Title Policy for the Property or a binding, signed, marked-up commitment to issue such Title Policy, certified by the Title Company, showing the Partnership as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on **Exhibit E** hereto and evidences the recording of this Agreement pursuant to the provisions of **Section 8.18** hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including but not limited to an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, and access. The Partnership has provided to DPD, on or prior to the Closing Date, documentation related to all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. The Partnership, at its own expense, has provided the City with searches for Developer as follows:

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

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

5.07 Survey. The Partnership has furnished the City the Survey – in an electronic format and one (1) copy with original signatures and seal.

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5.08 Insurance. The Partnership, at its own expense, has insured the Property in accordance with **Section 12** hereof, and has delivered certificates required pursuant to **Section 12** hereof evidencing the required coverages to DPD.

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

5.10 Evidence of Prior Expenditures. The Developer has provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures in accordance with the provisions of **Section 4.05(a)** hereof.

5.11 Financial Statements. The Partnership and Holsten have provided Financial Statements to DPD for its most recent fiscal year, and audited or unaudited interim financial statements.

5.12 Documentation. The Developer has provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters.

5.13 Environmental. The Partnership has provided DPD with copies of all environmental reports or audits, if any, obtained by the Partnership with respect to the Property, together with notices addressed to the Partnership from any agency regarding environmental issues at the Property. The Partnership has provided the City with a letter from the environmental engineer(s) who completed audit(s) for the Partnership, authorizing the City to rely on such audits.

5.14 Corporate Documents; Economic Disclosure Statement. The Developer has provided a copy of its organizational documents containing the original certification of the Secretary of State of its state organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; partnership agreement of the Developer; and such other organizational documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

5.15 Litigation. The Developer has provided to Corporation Counsel and DPD, a description of all pending or threatened litigation or administrative proceedings involving the Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

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SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for General Contractor and Subcontractors.

(a) DPD acknowledges that the Partnership has selected Linn-Mathes, Inc. or an Affiliate as the General Contractor for the Project. The Partnership will cause the General Contractor to solicit bids for work on the Project solely from qualified subcontractors eligible to do business with the City of Chicago.

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

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

6.03 Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, the Partnership shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better using a bond in the form attached as **Exhibit J** hereto. The City and the Limited Partner shall be named as obligee or co-obligee on any such bonds.

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

6.05 Other Provisions. In addition to the requirements of this **Section 6**, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to **Section 3.04** (Change Orders), **Section 8.09** (Prevailing Wage), **Section 10.11(c)** (Employment Opportunity), **Section 10.02** (City Resident Employment Requirement), **Section 10.03** (MBE/WBE Requirements, as applicable), **Section 12** (Insurance) and **Section 14.01** (Books and Records) hereof.

SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon completion of the Project in accordance with the terms of this Agreement, and upon the Partnership's written request, which shall include a final Project budget detailing the total actual cost of the construction of the Project (the "**Final Project Cost**"), DPD shall issue to the Partnership a Certificate in recordable form certifying that the Partnership has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. The Certificate will not be issued until the following requirements have been met, as supported by such evidence as the City may require in its sole discretion:

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- (i) The Partnership has completed construction of the Interior Build-out according to the Plans and Specifications;
- (ii) The Final Project Cost incurred by the Partnership is at least \$22,849,528; provided, however, that in the event that the Final Project Cost is less than \$22,849,528, the total amount of City Funds shall not be greater than 8.753% of the Final Project Cost, as described in **Section 4.03(b)**;
- (v) Receipt of a Certificate of Occupancy;
- (vi) The City's Monitoring and Compliance Unit has verified that the Partnership is in full compliance with City requirements set forth in **Section 10 (including, without limitation, Sections 10.02 and 10.03), Section 8.06 and Section 8.09** (M/WBE, City Residency and Prevailing Wage) with respect to construction of the Project, and that 100% of the Partnership's MBE/WBE Commitment in **Section 10.03** has been fulfilled; and
- (vii) There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

DPD shall respond to the Partnership's written request for a Certificate within thirty (30) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Partnership in order to obtain the Certificate. Partnership may resubmit a written request for a Certificate upon completion of such measures, and the City will respond within 30 days in the same way as the procedure for the initial request. Such process may repeat until the City issues a Certificate.

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

Those covenants specifically described in **Section 5.04** as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Partnership or a permitted assignee of the Partnership who, pursuant to **Section 18.15** of this Agreement, has contracted to take an assignment of the Partnership's rights under this Agreement and assume the Partnership's liabilities hereunder.

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

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(a) the right to terminate this Agreement and any other related agreements to which the City and the Partnership are or shall be parties and/or cease all disbursement of City Funds not yet disbursed pursuant hereto;

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to **Section 4.01**, the Partnership shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of the City Funds from the Partnership.

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

SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE PARTNERSHIP.

8.01 General. The Developer represents, warrants and covenants, as of the date of this Agreement, and as of the date of each disbursement of City Funds hereunder and throughout the Compliance Period, that:

(a) Holsten is an Illinois corporation, duly organized, validly existing and in good standing (Holsten only);

(b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate Holsten's Articles of Incorporation as amended and supplemented, its bylaws, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which Holsten is now a party or by which Holsten or any of its assets is now or may become bound (Holsten only);

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

(d) HHCD is an Illinois not-for-profit corporation, duly organized, validly existing and in good standing (HHCD only);

(e) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate HHCD's Articles of Incorporation as amended and supplemented, its bylaws, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which HHCD is now a party or by which HHCD or any of its assets is now or may become bound (HHCD only); HHCD has the right, power and authority to enter into, execute, deliver and perform this Agreement (HHCD only);

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(f) the Partnership (i) is an Illinois limited partnership duly organized and validly existing in the State of Illinois, (ii) has the right, power and authority to enter into, execute, deliver and perform this Agreement, and (iii) has been duly authorized by all necessary limited partnership action to execute, deliver and perform its obligations under this Agreement, which execution, delivery and performance does not and will not violate its certificate of limited partnership or partnership agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Partnership is now a party or by which it may become bound (Partnership only);

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

(h) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Partnership shall maintain good, indefeasible and merchantable title to the Property free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to **Section 8.15** hereof) (Partnership only);

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

(j) the Partnership has or will acquire as necessary and will maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project (Partnership only);

(k) the Partnership is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Partnership is a party or by which Partnership or any of its assets is bound which would materially adversely affect its ability to comply with its obligations under this Agreement (Partnership only);

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

(m) prior to issuance of the Certificate, if it would materially impact Partnership's ability to perform under this Agreement, the Partnership shall not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property in which it has an interest (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; (3) enter into any transaction outside the ordinary course of the Partnership's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Partnership's financial condition; provided, however, this section shall not apply to any commercial leases entered

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into in the ordinary course of business, it being acknowledged that Partnership shall have the right to enter into commercial leases in the ordinary course of business for the commercial, non-residential portions of Property on such terms as are determined by Partnership (Partnership only);

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

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

(m) neither the Partnership nor any affiliate of the Partnership is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in **Sections 3.02** and **3.03** hereof, and the Partnership's receipt of all required building permits and governmental approvals, the Partnership shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Bond Ordinance, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Partnership. The covenants set forth in this Section shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

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

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

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

8.06 Operating Covenant.

(a) **Regulatory Agreement Compliance.** The Partnership hereby covenants to construct, operate and maintain the Property and Project as described in **Recital D** throughout the Compliance Period in accordance with that certain Regulatory Agreement entered into by the City and the Partnership as of even date herewith.

(b) **Remedy.** In the event of a default for any of the Operating Covenant, the City shall have the right to recapture the full amount of all City Funds previously paid or disbursed to the Partnership for the Project and to exercise any other remedies described or referred to in this Agreement.

(c) **Affordable Units.** Of the 63 units comprising the Project, 53 units (or 84% of the Project's units) shall be housing units affordable to households with incomes not greater than 60% AMI.

(d) **Covenants Running with the Land.** The parties agree that the restrictions contained in this **Section 8.06** are covenants running with the land and shall be binding on any transferee.

8.07 Employment Opportunity; Progress Reports. The Partnership covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in **Section 10** hereof. The Partnership shall deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.09, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 70% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). Notwithstanding the foregoing, if the Project is begun before the Closing occurs, then at Closing the Partnership shall deliver to the City a written progress report detailing compliance with the requirements of **Sections 8.09, 10.02 and 10.03** of this Agreement based on the portion of the Project completed prior to Closing. If any such reports indicate a shortfall in compliance, the Partnership shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Partnership shall correct any shortfall.

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

8.09 Prevailing Wage. The Partnership covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All

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such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Partnership shall provide the City with copies of all such contracts entered into by the Partnership or the General Contractor to evidence compliance with this **Section 8.09**.

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

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

8.12 Disclosure of Interest. The Developer's counsel has no direct or indirect financial ownership interest in the Developer, the Property or any other aspect of the Project exceeding 7.5%

8.13 Financial Statements. The Partnership shall obtain and provide to DPD Financial Statements for the Partnership's fiscal year ended 2012 and each year thereafter for the Term of the Agreement. In addition, the Partnership shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

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

8.15 Non-Governmental Charges.

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

(b) **Right to Contest.** The Partnership has the right, before any delinquency occurs:

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

(ii) if required by a court or other applicable judicial or administrative body, to furnish a good and sufficient bond or other security or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

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

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

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

8.19 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. The Partnership agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Partnership, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon the Partnership or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties

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of the State other than Cook County, and municipalities other than the City) relating to the Partnership, the Property or the Project including but not limited to real estate taxes.

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

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

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

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

(c) Building Code. The City shall not fine or otherwise try to collect payment from the Partnership for any building code violation present at the time of Closing before the Certificate of Completion has been issued.

8.20 Annual Compliance Report. Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, the Partnership shall submit to DPD the Annual Compliance Report on or before March 1 after the end of the calendar year to which the Annual Compliance Report relates.

8.22 Survival of Covenants. All warranties, representations, covenants and agreements of the Developer contained in this **Section 8** and elsewhere in this Agreement shall be true, accurate

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and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in **Section 7** hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

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

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

SECTION 10. PARTNERSHIP'S EMPLOYMENT OBLIGATIONS

10.01 Employment Opportunity. The Partnership, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Partnership operating on the Property (collectively, with the Partnership, the "**Employers**" and individually an "**Employer**") to agree, that for the Term of this Agreement with respect to the Partnership and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

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

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

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

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

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

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

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

The Partnership 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.

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

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

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

The Partnership, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the

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Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The Partnership, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

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

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

When work at the Project is completed, in the event that the City has determined that the Partnership has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Partnership 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 Partnership, the General Contractor and/or the subcontractors to prosecution. The City may obtain payment of the liquidated damages hereunder, in the amount the appropriate City or official determines are due. **Any retainage to cover contract performance that may become due to the Partnership pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Partnership must surrender damages as provided in this paragraph.**

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 or related documents.

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

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

(a) Consistent with the findings which support, 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

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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 10.03**, during the course of the Project, at least the following percentages of the MBE/WBE Budget (as set forth in **Exhibit F-2** hereto) shall be expended for contract participation by MBEs and by WBEs:

- (1) At least 24 percent by MBEs.
- (2) At least four percent by WBEs.

(b) For purposes of this **Section 10.03** only, the Partnership (and any party to whom a contract is let by the Partnership in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the Partnership 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.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Partnership's MBE/WBE commitment may be achieved in part by the Partnership's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Partnership) 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 Partnership 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 Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Partnership's MBE/WBE commitment as described in this **Section 10.03**. In accordance with Section 2-92-730, Municipal Code of Chicago, the Partnership shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

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

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the Partnership 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

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subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

(f) Any reduction or waiver of the Partnership's MBE/WBE commitment as described in this **Section 10.03** shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) Prior to the commencement of the Project, the Partnership shall be required to meet with the City's monitoring staff with regard to the Partnership's compliance with its obligations under this **Section 10.03**. The General Contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Partnership shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this **Section 10.03**, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Partnership shall submit the documentation required by this **Section 10.03** to the City's monitoring staff, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (viii) 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 Partnership is not complying with its obligations under this **Section 10.03**, shall, upon the delivery of written notice to the Partnership, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to the Partnership to halt the Project, (2) withhold any further payment of any City Funds to the Partnership or the General Contractor, and/or (3) seek any other remedies against the Partnership available at law or in equity.

SECTION 11. ENVIRONMENTAL MATTERS

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

Without limiting any other provisions hereof, the Partnership agrees to indemnify, defend and hold the City (except with respect to Existing Materials and any gross negligence or wanton or willful misconduct by the City) harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Partnership: (i) the presence of any Hazardous Materials on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Materials from all or any portion of the Property, or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Partnership or any of its Affiliates under any Environmental Laws relating to the Property.

The Project shall include permeable pavers and one rain barrel, and the Building shall meet the City's "Energy Star" rating requirements.

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SECTION 12. INSURANCE

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

(a) Prior to execution and delivery of this Agreement.

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

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

(i) Workers Compensation and Employers Liability

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

(ii) Commercial General Liability (Primary and Umbrella)

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

(iii) Automobile Liability (Primary and Umbrella)

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

(iv) Railroad Protective Liability

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

(v) All Risk /Builders Risk

When Partnership undertakes any construction, including improvements, betterments, and/or repairs, the Partnership must provide or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

(vi) Professional Liability

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

(vii) Valuable Papers

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

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the Partnership must cause the remediation contractor to provide Contractor Pollution Liability Insurance covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended

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reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction:

(i) All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(d) Other Requirements:

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

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

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Partnership and Contractors.

The Partnership hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Partnership in no way limit the Partnership's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Partnership under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Partnership is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

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The Partnership must require Contractor and subcontractors to provide the insurance required herein, or Partnership may provide the coverages for Contractor and subcontractors. All Contractors and subcontractors are subject to the same insurance requirements of Partnership unless otherwise specified in this Agreement.

If Partnership, any Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

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

SECTION 13. INDEMNIFICATION

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

(i) the Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(ii) the Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement or any other document related to this Agreement that is the result of information supplied or omitted by the Developer or any Affiliate Developer or any agents, employees, contractors or persons acting under the control or at the request of the Developer or any Affiliate of Developer; or

(iv) the Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto;

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

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SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

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

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

SECTION 15. DEFAULT AND REMEDIES

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

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

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(f) the appointment of a receiver or trustee for the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within ninety (90) days after the commencement thereof;

(g) the entry of any judgment or order against the Developer in an amount that exceeds \$1 million that remains unsatisfied or undischarged and in effect for ninety (90) days after such entry without a stay of enforcement or execution and that materially impairs the Developer's ability to perform under this Agreement;

(h) the occurrence of an event of default under the Lender Financing, which default (i) is not cured within any applicable cure period, (ii) has not been waived in writing by the applicable lender and (iii) has caused the applicable lender to initiate foreclosure proceedings;

(i) the dissolution of the Developer;

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who has more than a thirty-three percent (33%) ownership interest in the Developer, which is not dismissed within thirty (30) days, or the indictment of the Developer or any natural person who has more than a 33% ownership interest in the Developer, for any crime (other than a misdemeanor).

For purposes of Section 15.01(j) hereof, a natural person with a material interest in the Developer is one owning in excess of thirty-three percent (33%) of such party's (or such party's ultimate parent entity's) issued and outstanding ownership shares or interest. Notwithstanding anything to the contrary contained herein, City hereby agrees that, in addition to the cure rights set out in Section 15.04 below, any cure of any default made or tendered by the Limited Partner or its lenders shall be deemed to be a cure by the Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

15.02 Remedies. Subject to the rights of the Limited Partner under Section 15.04, upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreements to which the City and the Developer are or shall be parties, suspend disbursement of City Funds, place a lien on the Property in the amount of City Funds paid, and/or seek reimbursement of any City Funds paid. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to damages, injunctive relief or the specific performance of the agreements contained herein. Upon the occurrence of an Event of Default under Section 8.06, the Developer shall be obligated to repay to the City all previously disbursed City Funds.

15.03 Curative Period.

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

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(b) In the event Developer fails to perform a non-monetary covenant which it is required to perform under this Agreement, an Event of Default will not be deemed to have occurred unless the applicable party has failed to cure such default within 30 days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such 30 day period, the applicable party will not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such 30 day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

15.04 Right to Cure by the Limited Partner and/or Construction Lender. If a default occurs under this Agreement and as a result thereof, the City intends to exercise any right or remedy available to it that could result in termination of this Agreement and all related agreements, or the suspension, cancellation, reduction or reimbursement of City Funds disbursed hereunder, or any other remedy under this Agreement, the City shall prior to exercising such right or remedy, send notice of such intended exercise to the Limited Partner and Construction Lender, and the Limited Partner (including, without limitation, by exercise of management take over rights of the Owner under its partnership agreement) and Construction Lender shall have the right (but not the obligation) to cure such default as follows:

(a) if a monetary default exists, the Limited Partner may cause to be cured such monetary default within 90 days after the later of (and Construction Lender, except as provided in Section 15.04(h) below, and the City shall take no action during such 90 day period): (i) the expiration of the cure period, if any, granted under Section 15.03 to Developer with respect to such monetary default; or (ii) receipt by the Limited Partner and Construction Lender of notice of default from the City. If the Limited Partner does not cause such monetary default to be cured within such 90-day time period set forth in the preceding sentence, then Construction Lender may cure such monetary default in the manner set forth in Section 15.04(c); and

(b) if a non-monetary default exists (except for a Personal Developer Default, as later defined), the Limited Partner may cause to be cured such non-monetary default within 90 days after the later of (and Construction Lender, except as provided in Section 15.04(h) below, and the City shall take no action during such 90 day period): (i) the expiration of the cure period, if any, granted under Section 15.03 to Developer with respect to such non-monetary default; or (ii) receipt by the Limited Partner and Construction Lender of notice of default from the City. If the Limited Partner does not cause such non-monetary default to be cured within such 90-day time period set forth in the preceding sentence, then Construction Lender may cure such monetary default in the manner set forth in Section 15.04(d); and

(c) if a monetary default exists, Construction Lender may cure such monetary default within 60 days after the later of (and the non-electing party and the City shall take no action during such 60-day period): (i) the expiration of the Limited Partner's 90-day cure period; or (ii) receipt by Construction Lender of notice from the City that the Limited Partner has failed to cure the default within the timeframe set forth in Section 15.04(a) above; and

(d) if a non-monetary default exists (except for a Personal Developer Default), Construction Lender may cure such non-monetary default within 90 days after the later of (and the non-electing party and the City shall take no action during such 90-day period): (i) the expiration of the Limited Partner's 90-day cure period; or (ii) receipt by Construction Lender of notice from the City that the Limited Partner has failed to cure the default within the timeframe set forth in Section 15.04(b) above; provided, however, if such non-monetary default is of a nature that is not subject to

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cure in 90 days, the cure period will be extended for the time period needed to cure such default (including any time period required by Construction Lender to take control of the Project by initiating foreclosure of its mortgage and/or appointing a receiver) and the City shall forbear from exercising its remedies hereunder so long as diligent and continuous efforts are being pursued to cure such default; and

(e)(1) If such non-monetary default would be an Event of Default set forth in Section 15.01(e), (f), (g), (i) or (j) hereof (each such default being a "Personal Developer Default"), the Limited Partner or Construction Lender (as applicable and in that strict order as more fully provided in this Section 15.04(e) below and not otherwise, the "Electing Party"), may provide written notice (the "Assumption Notice") to the City and the Limited Partner or Construction Lender (as applicable, the "Non-Electing Parties") within 30 days of receipt of notice from the City of such Personal Developer Default, as more fully provided in Section 15.04(e)(2) below. If notice is delivered within said 30-day period, the Electing Party shall, in accordance with Section 15.04(e)(2) below, either cure or cause to be cured such Personal Developer Default by the assignment pursuant to Section 18.15 hereof of all of the Developer's rights, obligations and interests in this Agreement to the Electing Party or any other party agreed to in writing by Construction Lender and the City, which assumption shall be deemed to cure the Personal Developer Default.

(2) Upon receipt by the City and Construction Lender of an Assumption Notice from the Limited Partner pursuant to subsection (e)(1) above, the cure period shall be extended for such reasonable period of time as may be necessary to complete such assignment and assumption of the Developer's rights, obligations and interests in this Agreement (but in no event longer than 90 days without the written consent of the City and Construction Lender). If the Limited Partner does not (i) provide such Assumption Notice within the 30 day period specified in subsection (e)(1), or (ii) identify to the City and the Non-Electing Parties any other party (which may be an affiliate of the Limited Partner other than any of the Developer) to assume the Developer's rights, obligations and interests in this Agreement within 30 days from the date of the Assumption Notice, then Construction Lender shall have 30 days to cure such Personal Developer Default by the assignment, in accordance with the provisions of Section 18.14 hereof, of all of the Developer's rights, obligations and interests in this Agreement to Construction Lender, or an affiliate thereof, or any other party agreed to in writing by Construction Lender and the City.

(f) If such Personal Developer Default is not cured by the Limited Partner or Construction Lender within the timeframes set forth in Section 15.04(e), then the City shall have available all remedies set forth in this Agreement, including those in Sections 5.02.

(g) During all such times as a Personal Developer Default exists and remains uncured after the expiration of all cure periods, no payments of City Funds shall occur until such time as such Personal Developer Default is thereafter cured.

(h) The City agrees that at any time during which an Event of Default has occurred under the Lender Financing Documents, during the period that Construction Lender is diligently and continuously pursuing actions or remedies under the Lender Financing, with or without the Developer, which are intended to cause substantial completion of the Project, and, as part of such actions or remedies, continues to fund or make advances to pay Project costs, the City shall likewise forbear from exercising its remedies under Section 15.02 and shall continue to fund the City funds in accordance with this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, the continuation of any cure periods under Section 15.03 and Section 15.04, in the event

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Construction Lender initiates a foreclosure proceeding and has not agreed to an assignment of Developer's obligations under this Agreement and is continuing to perform Developer's obligations hereunder, or the Limited Partner and Construction Lender provide a joint notice of discontinuance of actions or remedies intending to achieve substantial completion, the City may immediately commence to exercise any and all of the remedies specified in Section 15.02 above.

SECTION 16. MORTGAGING OF THE PROJECT

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

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

(b) In the event that any mortgagee shall succeed to the Partnership's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Partnership's interest hereunder in accordance with **Section 18.15** hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Partnership for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of the Partnership hereunder. Notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Partnership's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Partnership which accrued prior to the time such party succeeded to the interest of the Partnership under this Agreement, in which case the Partnership shall be solely responsible. If the City placed a lien on the Project pursuant to Section 15.02 hereof in connection with an Event of Default of Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, the City shall release such lien upon written request to do so by such succeeding mortgagee. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Partnership's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

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(c) Prior to the issuance by the City to the Partnership of a Certificate pursuant to **Section 7** hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD.

SECTION 17. NOTICE

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

If to the City: City of Chicago
 Department of Planning and Development
 121 North LaSalle Street, Room 1000
 Chicago, IL 60602
 Fax No. (312) 744-0759
 Attention: Commissioner

With Copies To: City of Chicago
 Department of Law
 Finance and Economic Development Division
 121 North LaSalle Street, Room 600
 Chicago, IL 60602
 Fax No. (312) 744-8538

If to the Partnership: Historic Strand, LP
 1020 West Monroe Avenue
 Chicago, IL 60613

If to HHCD: Holsten Human Capital Development, NFP
 1034 W. Montrose Avenue
 Chicago, Illinois 60613

If to Holsten: Holsten Real Estate Development Corporation
 1020 W. Montrose Avenue
 Chicago, IL 60613

With Copies To: Nicole Jackson, Esquire
 Applegate & Thorne-Thomsen, P.C.
 626 West Jackson Boulevard
 Suite 400
 Chicago, IL 60661
 Fax No. (312) 491-4411

If to Construction Lender: Citibank, N.A.
 390 Greenwich Street, 2nd Floor
 New York, New York 10013
 Attention: Account Specialist
 Deal ID #22975
 Facsimile: (212) 723-8209

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AND

325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Deal ID #22975
Facsimile: (805) 557 0924

AND

Citibank, N.A.
One Sansome Street, 27th Floor
San Francisco, California 94104
Attention: Account Specialist
Deal ID #22975
Facsimile: (415) 445-9965

AND

Citibank, N.A.
757 W. Fifth Street, 29th Floor
Los Angeles, California 90071
Attention: Account Specialist
Deal ID #22975
Facsimile: (213) 624-3380

If to Limited Partner:

Alliant Asset Management Company
21600 Oxnard Street
Suite 1200
Woodland Hills, CA 91367

With Copies To:

Kutak Rock LLP
1650 Farnham Street
Omaha, NE 68102
Attention: Shane Deaver

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

SECTION 18. MISCELLANEOUS

18.01 Amendment. Except as provided in this Section 18.01, and except for changes or amendments that are otherwise expressly identified as being in the discretion of the Commissioner, this Agreement and the Schedules and Exhibits attached hereto may not be materially amended without the written consent of all parties and the Limited Partner. In addition to consents and discretion expressly identified herein, the Commissioner, in her sole discretion, may amend or

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otherwise revise: (a) any exhibits containing legal descriptions in order to correct a surveyor's, scrivener's or clerical error in such a legal description, or to reflect any new subdivision of property index numbers, provided that such correction does not have a material effect on any portion of the Project; and (b) the unit locations and types; (c) Exhibits F-1 and F-2 in connection with updated budgets and/or the approval of Change Orders resulting in changes in the Project Budget in accordance with Section 3.05; and (d) Exhibit E to correct inadvertent omissions or permit other minor title encumbrances not in the nature of a lien. Amendments required in clauses (b) and (c) shall also require the Partnership's and Limited Partner's consent. The City in its sole discretion, may amend, modify or supplement the Redevelopment Plan. For purposes of this Agreement, Developer is only obligated to comply with the Redevelopment Plan as in effect on the date of this Agreement.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

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

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

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

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

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

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

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

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

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

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

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

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

18.15 Assignment. Prior to the issuance of the Certificate, the Partnership may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City, except for the collateral assignment of this Agreement to the Construction Lender by the Partnership. Any successor in interest to the Partnership under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.19** (Real Estate Provisions) and **8.22** (Survival of Covenants) hereof, for the Term of the Agreement. The Partnership consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

18.16 Binding Effect. This Agreement shall be binding upon the Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

18.17 Force Majeure. Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire, war, terrorism, or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its

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obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

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

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

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

18.21 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Partnership agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgement collection services. Partnership also will pay any court costs, in addition to all other sums provided by law.

18.22 Business Relationships That Create Financial Interests. The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (B) that Developer 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 that creates a Financial Interest, 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 any person with whom the elected City official or employee has a business relationship that creates a Financial Interest, 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 that creates a Financial Interest, and (C) 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, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

18.23 2011 City Hiring Plan Prohibitions.

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(a) The City is subject to the June 24, 2011 "City of Chicago Hiring Plan" (the "2011 City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2011 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) The Developer is aware that City policy prohibits City employees from directing any individual to apply for a position with the Developer, either as an employee or as a subcontractor, and from directing the Developer to hire an individual as an employee or as a subcontractor. Accordingly, the Developer must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by the Developer under this Agreement are employees or subcontractors of the Developer, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by the Developer.

(c) The Developer will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to the Developer by a City employee or City official in violation of Section 12.7(ii) above, or advocating a violation of Section 12.7(iii) above, the Developer will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Agreement. The Developer will also cooperate with any inquiries by IGO Hiring Oversight related to the Agreement.

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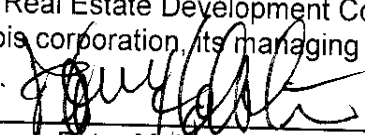
~~the head of the relevant City Department utilizing services provided under this Agreement. The Developer will also cooperate with any inquiries by IGO Hiring Oversight related to the Agreement.~~

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

HISTORIC STRAND, LP

By: Historic Strand, LLC, its general partner

By: Holsten Real Estate Development Corporation,
an Illinois corporation, its managing member

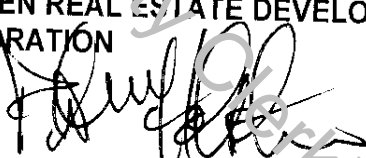
By: 
Name: Peter M. Holsten
Title: President

By: HHCD Strand LLC, an Illinois limited liability
company, a member

By: Holsten Human Capital Development, NFP,
an Illinois not-for-profit corporation, its sole
member

By: 
Name: Jackie Taylor Holsten
Title: Board Chair

HOLSTEN REAL ESTATE DEVELOPMENT CORPORATION

By: 
Name: Peter M. Holsten
Title: President

HOLSTEN HUMAN CAPITAL DEVELOPMENT, NFP

By: 
Name: Jackie Taylor Holsten
Title: Board Chair

CITY OF CHICAGO

By: _____
Andrew J. Mooney, Commissioner,
Department of Planning and Development

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

HISTORIC STRAND, LP

By: Historic Strand, LLC, its general partner

By: Holsten Real Estate Development Corporation,
an Illinois corporation, its managing member

By: _____
Name: Peter M. Holsten
Title: President

By: HHCD Strand LLC, an Illinois limited liability
company, a member

By: Holsten Human Capital Development, NFP,
an Illinois not-for-profit corporation, a
member

By: _____
Name: Jackie Taylor Holsten
Title: Board Chair

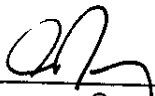
HOLSTEN REAL ESTATE DEVELOPMENT CORPORATION

By: _____
Name: Peter M. Holsten
Title: President

HOLSTEN HUMAN CAPITAL DEVELOPMENT, NFP

By: _____
Name: Jackie Taylor Holsten
Title: Board Chair

CITY OF CHICAGO

By:  _____
Andrew J. Mooney, Commissioner,
Department of Planning and Development

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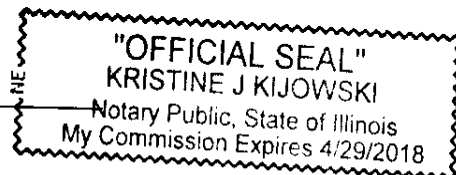
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Kristine J. Kijowski, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Peter M. Holsten, personally known to me to be the president of Holsten Real Estate Development Corporation, an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the shareholders of Holsten Real Estate Development Corporation, as his free and voluntary act and as the free and voluntary act of Holsten Real Estate Development Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 30th day of September, 2014.

Kristine J. Kijowski
Notary Public

My Commission Expires _____



(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Kristine J. Kijowski, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jackie Taylor Holsten, personally known to me to be the board chair of Holsten Human Capital Development NFP, an Illinois not-for-profit corporation ("HHCD"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered said instrument, pursuant to the authority given to her by the board of HHCD, as her free and voluntary act and as the free and voluntary act of HHCD, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 30th day of September, 2014.

Kristine J. Kijowski
Notary Public

My Commission Expires _____



(SEAL)

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EXHIBIT A

REDEVELOPMENT AREA

(See Attached)

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EXHIBIT B

PROPERTY

Legal Description

[subject to survey and final title commitment]

Lots 11 to 15, inclusive and Lots 43 to 46, inclusive, in Block 2 in Snow & Dickinson's Subdivision of Blocks 1, 2, & 3 in William Hale Thompson's Addition to Chicago, in the Northwest ¼ of Section 23, Township 38 North, Range 14 East of the third principal meridian, in Cook County, Illinois. (Containing 20,100 square feet or 0.6451 acres)

Common addresses and PINs:

6315 South Cottage Grove Avenue
20-23-100-004-0000

6314 South Maryland Avenue
20-23-100-007-0000

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EXHIBIT C

TIF-FUNDED IMPROVEMENTS

Eligible Cost	Amount	TIF- Eligible	Percentage TIF-Eligible
Construction Residential	\$ 14,438,333	\$ 4,515,409	50% of Eligible Costs for Affordable Units
Contingency: Hard Costs	\$ 1,266,521	\$ 532,743	50% of Eligible Costs for Affordable Units
Architecture	\$ 758,226	\$ 318,936	50% of Eligible Costs for Affordable Units
Engineering / Environmental	\$ 1,293,919	\$ 550,268	50% of Eligible Costs for Affordable Units
TIF Consultant	\$ 59,533	\$ 25,042	50% of Eligible Costs for Affordable Units
Legal - Zoning	\$ 47,000	\$ 19,770	50% of Eligible Costs for Affordable Units
TOTAL**	\$ 17,863,532	\$ 5,962,168	

The Commissioner shall have authority to consent to adjustments between the line items set forth above and to consent to additional TIF-Funded Improvement redevelopment project costs within other categories authorized under the Act.

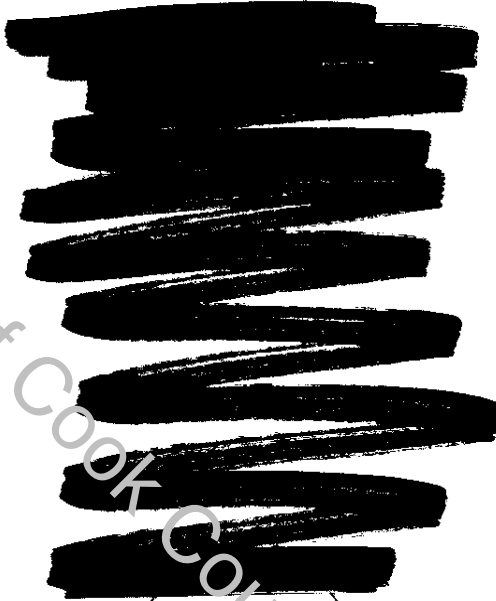
**Note: Notwithstanding the total dollar amount of TIF-Funded Improvements listed above, the financial assistance to be provided by the City under this Agreement is limited to a maximum of \$2,000,000, subject to adjustment as provided in Section 4.03.

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EXHIBIT D

CONSTRUCTION CONTRACT

(To be Attached at Closing)



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EXHIBIT E

PERMITTED LIENS

1. Liens or encumbrances against the Property:

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any: None

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EXHIBIT F-1

PROJECT BUDGET

Land Acquisition		\$1
Hard Construction Costs (68.2% of TPC)		\$15,704,854
Soft Costs		
Architect's Fee (4.62% of hard costs)	\$	733,226
Loan Origination Fee (1.29% of loan)	\$	162,417
Legal Fees (2.09% of total costs)	\$	472,000
Marketing (0.78% of total costs)	\$	179,140
Loan Interest (3.71% of total costs)	\$	850,000
Environmental (6.46% of total costs)	\$	1,556,379
Reserves (5.67% of total costs)	\$	1,300,000
Developer Fee (4.36% of total costs)	\$	1,000,000
Other Soft Costs (3.70% of total costs)	\$	891,511
Total Soft Costs (30.7% of total costs)	\$	<u>7,144,673</u>
Total		\$22,849,528

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EXHIBIT F-2

MBE/WBE BUDGET

Hard Cost Construction	\$	12,862,538
Related Soft		
Costs	\$	2,055,713
Total	\$	14,918,251**

24% MBE =	\$	3,580,380
4% WBE =	\$	596,730

** This amount does not include the construction contingency.
To the extent that this contingency is expended, it will be subject to MBE/WBE requirements.

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EXHIBIT G

APPROVED PRIOR EXPENDITURES

None

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