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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 11/02/2016 11:35 AM PG: 1 OF 80

This agreement was prepared by and after recording return to:  
Michael L. Gaynor  
City of Chicago Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

## MONTROSE CLARENDON APARTMENTS REDEVELOPMENT AGREEMENT

1674230 2 of 6

This Montrose Clarendon Apartments Redevelopment Agreement (this "Agreement") is made as of this 31<sup>st</sup> day of October, 2016 by and the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Planning and Development ("DPD"), Montrose Clarendon Partners LLC, an Illinois limited liability company ("Partners"), and Montrose and Clarendon LLC, a Delaware limited liability company (the "Developer"). The member of the Developer is Montrose and Clarendon Holdings LLC, a Delaware limited liability company ("Holdings"). The members of Holdings are Partners and PR III Montrose Development, LLC, a Delaware limited liability company. The Developer and Partners are collectively, jointly and severally known herein as "Montrose Clarendon".

### 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.

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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 June 30, 2010: (1) "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan for the Montrose/Clarendon Redevelopment Project Area" (the "Plan Adoption Ordinance"); (2) "An Ordinance of the City of Chicago, Illinois Designating the Montrose/Clarendon 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 the Montrose/Clarendon 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.

D. The Project: Developer intends to purchase (the "Acquisition") certain property located within the Redevelopment Area at Montrose and Clarendon Avenues in Chicago, Illinois and legally described on Exhibit B hereto (the "Property"), and, within the time frames set forth in Section 3.01 hereof, shall commence and complete construction of (1) the "Residential Facility," a single mixed-use 27-story tower (approximately 284 feet) with approximately 381 residential rental units, approximately 30,511 square feet of grocery/retail space on the first and second floors, and approximately 275 parking spaces on the parcel known as "Sub-Area A" of the Property (as described on Exhibit B); and (2) the "Commercial Facility," an approximately 5,900 square feet single-story building of commercial/retail space with approximately 11 exterior parking spaces on the parcel known as "Sub-Area C" of the Property (as described on Exhibit B). The 381 residential units in the Residential Facility are expected to include 120 studio units, 194 one bedroom units, 58 two bedroom units, 1 three bedroom unit and 8 townhome units. As detailed in Section 8.24, the Project is expected to include 361 units rented at market rates and will include 20 affordable rental units half of which shall be set aside for families who earn less than 50% of Chicago-area median income and half of which shall be set aside for families who earn less than 60% of Chicago-area median income. The Residential Facility and the Commercial Facility (together, the "Facility") and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the City of Chicago Montrose Clarendon Tax Increment Financing Redevelopment Plan and Project (the "Redevelopment Plan") included in the Plan Adoption Ordinance and published at pages 94606-94649 of the Journal of the Proceedings of the City Council for June 30, 2010.

F. City Financing: The City agrees to use, in the amounts set forth in Section 4.03 hereof, (i) [intentionally omitted], (ii) Available Incremental Taxes, and (iii) [intentionally omitted], to pay for or reimburse Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement and the City Note.

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

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Developer pursuant to this Agreement), to make payments of principal and interest on the City Note, 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. Montrose Clarendon 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
3. The Project	C *TIF-Funded Improvements
4. Financing	D Sample IRR Calculation
5. Conditions Precedent	E Construction Contract
6. Agreements with Contractors	F Escrow Agreement
7. Completion of Construction or Rehabilitation	G *Permitted Liens
8. Covenants/Representations/Warranties of Developer	H-1 *Project Budget
9. Covenants/Representations/Warranties of the City	H-2 *MBE/WBE Budget
10. Developer's Employment Obligations	I [intentionally omitted]
11. Environmental Matters	J Opinion of Counsel
12. Insurance	K [intentionally omitted]
13. Indemnification	L Requisition Form
14. Maintaining Records/Right to Inspect	M *Form of City Note
15. Defaults and Remedies	N [intentionally omitted]
16. Mortgaging of the Project	O Form of Payment Bond
17. Notice	P Investor Letter
18. Miscellaneous	(An asterisk (*) indicates which exhibits are to be recorded.)

## 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.

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

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"Affiliate" shall mean any person or entity directly or indirectly controlling or owning, controlled or owned by or under common control or ownership with Montrose Clarendon.

"Annual Compliance Report" shall mean a signed report from Developer to the City (a) itemizing each of Developer's obligations under the RDA during the preceding calendar year, (b) certifying 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 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) [intentionally omitted]; (2) compliance with the Occupancy Covenant (Section 8.06); (3) delivery of Financial Statements and unaudited financial statements (Section 8.13); (4) delivery of updated insurance certificates, if applicable (Section 8.14); (5) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 8.15); (6) notification of a Capital Event (Section 4.08); (7) delivery of evidence that LEED Certification has been obtained (Section 8.22); (8) compliance with the Affordable Housing Covenant (Section 8.24); and (9) compliance with all other executory provisions of the Agreement.

"Annual Report of Available Incremental Taxes" means a signed report from a recognized financial consultant approved by the City that sets forth as of its date (i) a description of the Redevelopment Area, (ii) a description of the Project, (iii) a status update of the Project, including information on construction occupancy, leasing or sales, as applicable; and (iv) a calculation of the Available Incremental Taxes constituting the source of funds for payment on any City Note, showing for the Property or applicable tax codes the current year equalized assessed value, the initial equalized assessed value, the incremental equalized assessed value and the composite tax rates for the last five years.

"Available Incremental Taxes" shall mean an amount equal to the Incremental Taxes deposited in the TIF Fund attributable to the taxes levied on the Property.

"Available Project Funds" shall have the meaning set forth for such term in Section 4.07 hereof.

"Base IRR Threshold" shall have the meaning set forth in Section 4.08.

"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.

"Capital Event" shall have the meaning set forth in Section 4.08.

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

"Certificate of Expenditure" shall mean any Certificate of Expenditure referenced in the City Note pursuant to which the principal amount of the City Note will be established.

"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.

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"City Contract" shall have the meaning set forth in Section 8.01(l) hereof.

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

"City Funds" shall mean the funds described in Section 4.03(b) hereof, including the funds paid to Developer pursuant to the City Note.

"City Note" shall mean the taxable note, to be in the form attached hereto as Exhibit M-2, in the maximum principal amount of \$11,280,000, to be issued by the City to Developer as provided herein. The City Note shall bear interest at the City Note Interest Rate and shall provide for accrued, but unpaid, interest to bear interest at the same annual rate. Upon issuance of the Certificate, the City shall issue the City Note. The Developer may sell the City Note subject to Section 18.21 hereof. The City Note shall have a second lien on Available Incremental Taxes (subject to the first lien of the note issued or to be issued by the City pursuant to the Park Agreement, including the payment of interest thereunder). The City shall make annual payments on the City Note each May 1, commencing in the first calendar year after issuance.

"City Note Interest Rate" shall mean an annual interest rate of 7% per annum.

"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.

"Commercial Facility" shall have the meaning set forth in Recital D hereof.

"Consultant's Report" shall have the meaning set forth in Section 8.27(a) hereof.

"Contract" shall have the meaning set forth in Section 10.03 hereof.

"Contractor" shall have the meaning set forth in Section 10.03 hereof.

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

"Construction Start" shall mean the date on which the Developer starts work on the Project including, but not limited, to site preparation, demolition, excavation, building construction, or environmental remediation.

"Corporation Counsel" shall mean the City's Department of Law.

"EDS" shall mean the City's Economic Disclosure Statement and Affidavit, on the City's then-current form, whether submitted in paper or via the City's online submission process.

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

"Employment Plan" shall have the meaning set forth in Section 5.12 hereof.

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"EMMA" shall have the meaning set forth in Section 8.27(c) 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.

"Equity" shall mean funds of Developer (other than funds derived from Lender Financing) irrevocably 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) or Section 4.03(b). For purposes of this definition of Equity the Developer shall include all members thereof and investors therein.

"Escrow" shall mean the construction escrow established pursuant to the Escrow Agreement.

"Escrow Agreement" shall mean the Escrow Agreement establishing a construction escrow, to be entered into as of the date hereof by the Title Company (or an affiliate of the Title Company), Developer and Developer's lender(s), substantially in the form of Exhibit F attached hereto.

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

"Excess IRR Threshold" shall have the meaning set forth in Section 4.08.

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

"Financial Interest" shall have the meaning set forth for such term in Section 2-156-010 of the Municipal Code.

"Financial Statements" shall mean complete audited financial statements of Developer 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 the general contractor(s) hired by Developer pursuant to Section 6.01.

"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

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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.

"In Balance" shall have the meaning set forth in Section 4.07 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 TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

"Indemnitor" and "Indemnitees" shall have the meanings set forth in Section 13.01 hereof.

"IRR" shall have the meaning set forth in Section 4.08.

"LEED Certification" shall mean a basic Certification of the Project under the Leadership in Energy and Environmental Design (LEED) Green Building Rating System maintained by the U.S. Green Building Council and applicable to residential and commercial interiors.

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

"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 H-2, as described in Section 10.03.

"MBE/WBE Program" shall have the meaning set forth in Section 10.03 hereof.

"Monitoring Period" shall mean the ten year period commencing with the issuance of the Certificate.

"MSRB" shall have the meaning set forth in Section 8.27(c) hereof

"Municipal Code" shall mean the Municipal Code of the City of Chicago, as amended from time to time.

"New Mortgage" shall have the meaning set forth in Article 16 hereof.

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

"OBM" shall have the meaning set forth in Section 8.27(c) hereof.

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"Park Agreement" means that certain Montrose Clarendon Park Redevelopment Agreement dated contemporaneously herewith among the City, Partners and the Developer.

"Partial Capital Event" shall have the meaning set forth in Section 4.08.

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

"Permitted Mortgage" shall have the meaning set forth in Article 16 hereof.

"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 H-1, showing the total cost of the Project by line item, furnished by Developer 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.

"Reimbursed City Funds Amount" shall have the meaning set forth in Section 4.08.

"Requisition Form" shall mean the document, in the form attached hereto as Exhibit L, to be delivered by Developer to DPD pursuant to Section 4.04 of this Agreement.

"Residential Facility" shall have the meaning set forth in Recital D hereof.

"Sales Price Threshold" shall have the meaning set forth in Section 4.08.

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

"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



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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 construction of the Facility and related improvements 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 ending on December 31, 2034.

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

“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.

“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 Old Republic National Title Insurance Company.

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

“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.

## SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, Developer shall, pursuant to the Plans and Specifications and subject to the provisions of Section 18.17 hereof: (i) commence construction no later than December 1, 2016; and (ii) complete construction and conduct business operations therein no later than August 1, 2019. The foregoing dates may be amended in the City's discretion, subject to Section 18.01 hereof. The Developer hereby notifies the City that Construction Start will occur within the next 30 days.

3.02 Scope Drawings and Plans and Specifications. Developer 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

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Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. Developer 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.** Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in an amount not less than \$120,444,198. Developer hereby certifies to the City that (a) it has Lender Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to Section 3.04 hereof.

**3.04 Change Orders.** Except as provided below in this Section 3.04, 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 Developer to DPD concurrently with the progress reports described in Section 3.07 hereof; provided, that any Change Order relating to any of the following must be submitted by Developer to DPD for DPD's prior written approval: (a) a reduction in the gross or net square footage of the Project by five percent (5%) or more (either individually or cumulatively); (b) a change in the use of the Facility to a use other than as described in Recital D to this Agreement; (c) a delay in the completion of the Project by six (6) months or more; or (d) Change Orders resulting in an aggregate increase to the Project Budget for the Project of ten percent (10%) or more. Developer 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 Developer of DPD's written approval (to the extent said City prior approval is required pursuant to the terms of this Agreement). 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 Developer. Notwithstanding anything to the contrary in this Section 3.04, Change Orders other than those set forth above do not require DPD's prior written approval as set forth in this Section 3.04, but DPD shall be notified in writing of all such Change Orders within 10 business days after the execution of such Change Order and Developer, in connection with such notice, shall identify to DPD the source of funding therefor.

**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, Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals) hereof. Developer shall not commence construction of the Project until Developer 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.

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3.07 Progress Reports and Survey Updates. Developer 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). Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect. An independent agent or architect (other than Developer's architect) selected by one of the Permitted Mortgage holders providing Lender Financing (and approved by DPD) or DPD shall act as the inspecting agent or architect, at Developer's expense, for the Project. The inspecting agent or architect shall inspect the Project and provide a certification with respect thereto to DPD prior to issuance of the Certificate.

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

3.10 Signs and Public Relations. Developer 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 Developer, the Property and the Project in the City's promotional literature and communications.

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

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

## SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$120,444,198, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to <u>Sections 4.03(b) and 4.06</u> )	\$ 45,768,795
Lender Financing	\$ 74,675,403
ESTIMATED TOTAL	\$120,444,198

4.02 Developer Funds. Equity and/or Lender Financing shall be used to pay all Project costs, including but not limited to Redevelopment Project costs and costs of TIF-Funded Improvements.

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## 4.03 City Funds.

(a) Uses of City Funds. City Funds may only be used to pay directly or reimburse Developer 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. City Funds shall not be paid to Developer hereunder prior to the issuance of a Certificate.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to Section 2, this Section 4.03 and Section 5 hereof, the City hereby agrees to issue the City Note to Developer. The principal amount of the City Note shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by Developer and are to be reimbursed by the City through payments of principal and interest on the City Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the City Note shall be an amount not to exceed the lesser of \$11,280,000 or 9.37% of the actual total Project costs; and provided, however, that payments under the City Note are subject to the amount of Available Incremental Taxes deposited into the TIF Fund being sufficient for such payments.

(c) [intentionally omitted]

(d) [intentionally omitted]

4.04 Construction Escrow. The City must receive copies of any draw requests and related documents submitted to the Title Company for disbursements under the Escrow Agreement.

## 4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

(a) [intentionally omitted]

(b) [intentionally omitted]

(c) [intentionally omitted]

(d) 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 \$50,000 or \$200,000 in the aggregate, may be made without the prior written consent of DPD.

(e) [intentionally omitted]

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, Developer shall be solely responsible for such excess cost, and

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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 Preconditions of Execution of Certificate of Expenditure. Prior to each execution of a Certificate of Expenditure by the City, Developer shall submit documentation regarding the applicable expenditures to DPD, which shall be satisfactory to DPD in its sole discretion. Delivery by Developer to DPD of any request for execution by the City of a Certificate of Expenditure hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that:

(a) the total amount of the request for Certificate of Expenditure represents the actual cost of the Acquisition or the actual amount payable to (or paid to) the General Contractor and/or subcontractors who have performed work on the Project, and/or their payees;

(b) all amounts shown as previous payments on the current request for Certificate of Expenditure have been paid to the parties entitled to such payment;

(c) Developer has approved all work and materials for the current request for Certificate of Expenditure, and such work and materials conform to the Plans and Specifications;

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

(e) Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens;

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(g) 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) [intentionally omitted]; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by Developer pursuant to this Agreement. Developer hereby agrees that, if the Project is not In Balance, Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any execution of a Certificate of Expenditure 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 correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by Developer. In addition, Developer shall have satisfied all other preconditions of execution of a Certificate of Expenditure, including but not limited to requirements set forth in the TIF Ordinances and/or this Agreement.

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4.08 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 follows:

- (a) For purposes of this Section 4.08, the term "Capital Event" shall mean and include any arms-length sale, transfer or refinancing of the Project or any part thereof. If a Capital Event occurs prior to the expiration of the Monitoring Period, Developer agrees to pay and remit to the City an amount equal to 20% of the net proceeds realized from such Capital Event to the extent, and only to the extent, that such overall net proceeds exceed the Base IRR Threshold (defined below), provided that the aggregate amount of said payment to the City (i) shall not exceed \$11,280,000 as a portion of the Developer's net proceeds of a Capital Event that exceed the Base IRR Threshold but are less than the Excess IRR Threshold (defined below), and (ii) shall not be limited as a portion of the Developer's net proceeds of a Capital Event that exceed the Excess IRR Threshold. For purposes of this section, the "Base IRR Threshold" shall be an amount of proceeds sufficient for Developer to achieve a leveraged internal rate of return on equity, calculated as of the date of the Capital Event in the manner described below ("IRR"), of 22%, and the "Excess IRR Threshold" shall be an amount of proceeds sufficient for Developer to achieve an IRR of 25%.
- (b) The IRR will be calculated on a leveraged basis based on all equity contributed to the Project, expenses advanced by the Project and evidenced by the City Note, the actual distributions to equity as of the date of the Capital Event, and payments actually made pursuant to the City Note, using the same methodology as used for the Developer's gap analysis provided to the City and with a sample calculation attached to this Agreement as Exhibit D. The calculation shall include and account for actual distributions to, and losses realized by, equity sources occurring prior to the date of the Capital Event, including any funds disbursed to (or losses realized by) Developer's equity sources in connection with transfers of interests in the Developer.
- (c) Upon the occurrence of a Capital Event of less than the entire Project (a "Partial Capital Event"), any resulting successor owner (or the Developer in the case of a partial refinance) shall have no further obligations or liabilities under this Section 4.08 with respect to the portion of the Project that is the subject of the Partial Capital Event; provided, however, that this Section 4.08 shall remain in force and effect for the remaining portion of the Project that has not been the subject of a Partial Capital Event, and the net proceeds of any Partial Capital Event shall be included and accounted for in the IRR calculation, with respect to the portion of the Project that was not subject to the Partial Capital Event.
- (d) Any amounts remitted to the City pursuant to this Section 4.08 shall be deposited by the City into a separate account within the TIF Fund and shall be used for Redevelopment Project Costs.
- (e) Any amounts due and owing to the City pursuant to this Section 4.08 due to the occurrence of a Capital Event shall be paid by the Developer on the closing date of such Capital Event.

The Developer must give the City 30 days advance written notice of any Capital Event or Partial Capital Event. Except as set forth above with respect to a Partial Capital Event, this Section 4.08 shall remain in effect until the earlier to occur of (i) the occurrence of a Capital Event with respect to all portions of the Project (whether a single Capital Event or multiple Partial Capital Events), or (ii) expiration of the Monitoring Period.

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4.09 [intentionally omitted].

## 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. Developer 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. Developer has submitted to DPD, and DPD has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of Section 3.02 hereof.

5.03 Other Governmental Approvals. Developer 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. Developer has furnished proof reasonably acceptable to the City that Developer has Equity and Lender Financing 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, Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by Developer as needed and are sufficient (along with the Equity and any other sources set forth in Section 4.01) to complete the Project. Developer has delivered to DPD a copy of the construction escrow agreement entered into by Developer regarding the Lender Financing. Any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of Developer, with the Office of the Recorder of Deeds of Cook County.

5.05 Acquisition and Title. On the Closing Date, Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing Developer 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 G 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, access and survey. Developer has provided to DPD, on or prior to the Closing Date, documentation related to the purchase of the Property and certified copies of 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. Developer, at its own expense, has provided the City with searches as indicated in the chart below under Montrose Clarendon's name showing no liens against Developer, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens:

Jurisdiction	Searches
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Secretary of State	UCC, Federal tax
Cook County Recorder	UCC, Fixtures, Federal tax, State tax, Memoranda of judgments
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

5.07 Surveys. Developer has furnished the City with three (3) copies of the Survey.

5.08 Insurance. Developer, 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 Counsel. (a) On the Closing Date, Montrose Clarendon has furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit J, with such changes as required by or acceptable to Corporation Counsel. If Montrose Clarendon 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 J hereto, such opinions were obtained by Montrose Clarendon from its general corporate counsel.

(b) [intentionally omitted]

5.10 Evidence of Prior Expenditures. 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. Developer has provided Financial Statements to DPD for its most recent fiscal year, and audited or unaudited interim financial statements.

5.12 Documentation; Employment Plan. The Developer has provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters, in connection with the construction or rehabilitation work on the Project, including the reports described in Section 8.07. At least thirty (30) days prior to the Closing Date, Developer has provided to DPD, and DPD has approved, the Employment Plan for the Project (the "Employment Plan"). The Employment Plan includes, without limitation, the Developer's estimates of future job openings, titles, position descriptions, qualifications, recruiting, training, placement and such other information as DPD has requested relating to the Project.

5.13 Environmental. Developer has provided DPD with copies of that certain phase I environmental audit completed with respect to the Property and any phase II environmental audit with respect to the Property required by the City. Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

5.14 Company Documents; Economic Disclosure Statement. Montrose Clarendon has provided a copy of its Articles or Certificate of Organization containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which Montrose Clarendon is qualified to do business; a secretary's certificate in such form and substance as the



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Corporation Counsel may require; operating agreement of the company; and such other corporate documentation as the City has requested.

Montrose Clarendon has provided to the City an EDS, dated as of the Closing Date, which is incorporated by reference, and Montrose Clarendon further will provide any other affidavits or certifications as may be required by federal, state or local law in the award of public contracts, all of which affidavits or certifications are incorporated by reference. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Montrose Clarendon and any other parties required by this Section 5.14 to complete an EDS must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership and changes in disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

**5.15 Litigation.** Montrose Clarendon has provided to Corporation Counsel and DPD, a description of all pending or threatened litigation or administrative proceedings involving Montrose Clarendon, 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.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

**6.01 Bid Requirement for General Contractor and Subcontractors.** Prior to entering into an agreement with a General Contractor or any subcontractor for construction of the Project, Developer shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with the City of Chicago. Developer's selection of the General Contractor shall be subject to the City's prior written approval. (i) For the TIF-Funded Improvements, Developer shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible and responsive bid, as determined by Developer, who can complete the Project in a timely and good and workmanlike manner; provided, however, that Developer may consider a bidder's ability to meet the unique challenges of the Project in evaluating the "lowest responsible bid." If Developer selects a General Contractor (or the General Contractor selects any subcontractor) submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. (ii) For Project work other than the TIF-Funded Improvements, if Developer selects a General Contractor (or the General Contractor selects any subcontractor) who has not submitted the lowest responsible bid, the difference between the lowest responsible bid and the higher bid selected shall be subtracted from the actual total Project costs for purposes of the calculation of the amount of City Funds to be contributed to the Project pursuant to Section 4.03(b) hereof. Developer shall submit copies of the Construction Contract to DPD in accordance with Section 6.02 below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within twenty (20) business days after execution thereof. Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

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6.02 Construction Contract. Prior to the execution thereof, Developer shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with Section 6.01 above, for DPD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such contract by Developer, the General Contractor and any other parties thereto, Developer shall 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, Developer 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 O hereto. The City shall be named as obligee or co-obligee on any such bonds.

6.04 Employment Opportunity. Developer 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 10.01(e) (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. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-funded Improvements shall be provided to DPD within 20 business days of the execution thereof.

## SECTION 7. COMPLETION OF CONSTRUCTION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon:

- (a) completion of the construction of the Project in accordance with the terms of this Agreement,
- (b) the Developer's receipt of a Certificate of Occupancy for the Project from the City (or other evidence acceptable to DPD that the Developer has complied with building permit requirements for the Project),
- (c) the Developer's submission of evidence that 20 affordable housing units are located at the Project and either occupied, or available for occupancy, by eligible tenants (see Section 6.24),
- (d) the Developer's submission of evidence of occupancy of 75% of the retail space located within the Project (consisting of the approximately 30,511 square feet of retail space located within Sub-Area A/the Residential Facility and the approximately 5,900 square feet of retail space located within Sub-Area C/the Commercial Facility) (see Section 8.06),
- (e) the Developer's submission of evidence of compliance with all requirements of the City of Chicago's Sustainable Development Policy as it pertains to the Project, including 100% green roof and LEED certification (see Section 8.22),

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(f) the Developer's submission of evidence acceptable to DPD that the total Project costs are equal to, or greater than, \$120,444,198 in which the City Funds are in an amount not to exceed \$11,280,000 which is approximately 9.37% of the total Project costs,

(g) the Developer's submission of evidence that the Developer has incurred the costs of TIF-Funded Improvements in an equal amount to, or greater than, the total maximum amount of City Funds (up to \$11,280,000),

(h) the City's Construction Compliance unit determination in writing that the Developer is in complete compliance with all City Requirements (M/WBE, MPLA, City Residency, and Prevailing Wage), as provided in this Agreement (see Sections 8.09, 8.26, 10.02 and 10.03), and

(i) the Developer's written request,

DPD shall issue to Developer a Certificate in recordable form certifying that Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to Developer's written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by Developer in order to obtain the Certificate. Developer may resubmit a written request for a Certificate upon completion of such measures.

With respect to items (f) and (g) above, if the total Project costs are less than \$120,444,198 than the amount of City Funds and the minimum amount of TIF-Funded Improvements shall be approximately 9.37% of such lower total Project costs pursuant to Section 4.03(b) hereof and the Certificate shall be issued accordingly, subject to all the other requirements of this Section 7.01.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate 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 at Sections 8.02, 8.06, 8.19 and 8.24 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; provided, that upon the issuance of a Certificate, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon Developer or a permitted assignee of Developer who, pursuant to Section 18.15 of this Agreement, has contracted to take an assignment of Developer's rights under this Agreement and assume Developer's liabilities hereunder.

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7.03 Failure to Complete. If Developer 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:

(a) the right to terminate this Agreement;

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing such TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, Developer 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) [intentionally omitted].

7.04 Notice of Expiration of Term of Agreement. Upon the expiration of the Term of the Agreement, DPD shall provide Developer, at Developer'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 DEVELOPER.

8.01 General. Montrose Clarendon represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

(a) Montrose Clarendon is an Illinois limited liability company, duly organized, validly existing, qualified to do business in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

(b) Montrose Clarendon has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by Montrose Clarendon of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its Articles of Organization or operating 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 Montrose Clarendon is now a party or by which Montrose Clarendon is now or may become bound;

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement (including but not limited to Section 18.22 hereof), Developer shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that Developer is contesting in good faith pursuant to Section 8.15 hereof).

(e) Montrose Clarendon is now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

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

(g) Montrose Clarendon has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project;

(h) Montrose Clarendon 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 Montrose Clarendon is a party or by which Montrose Clarendon is bound;

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

(j) prior to the issuance of a Certificate and except as permitted under Section 18.22 below, Montrose Clarendon 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 (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business and except as permitted under Section 18.22 hereof; (3) enter into any transaction outside the ordinary course of Montrose Clarendon'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 Montrose Clarendon's financial condition;

(k) Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPL, 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;

(l) Montrose Clarendon 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 Montrose Clarendon in violation of Chapter 2-156-120 of the Municipal Code;

(m) neither Montrose Clarendon nor any affiliate of Montrose Clarendon 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,

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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.

(n) Developer understands that (i) the City Funds are limited obligations of the City, payable solely from moneys on deposit in the Montrose Clarendon Partners – Montrose Clarendon Apartments Account of the TIF Fund; (ii) the City Funds do not constitute indebtedness of the City within the meaning of any constitutional or statutory provision or limitation; (iii) Developer will have no right to compel the exercise of any taxing power of the City for payment of the City Funds; and (iv) the City Funds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of Illinois or any political subdivision thereof;

(o) Developer has sufficient knowledge and experience in financial and business matters, including municipal projects and revenues of the kind represented by the City Funds, and has been supplied with access to information to be able to evaluate the risks associated with the receipt of City Funds;

(p) Developer understands that there is no assurance as to the amount or timing of receipt of City Funds, and that the amounts of City Funds actually received by such party are likely to be substantially less than the maximum amounts set forth in Section 4.03(b);

(q) Developer understands it may not sell, assign, pledge or otherwise transfer its interest in this Agreement or City Funds in whole or in part except in accordance with the terms of Sections 18.14 and 18.21 of this Agreement, and, to the fullest extent permitted by law, agrees to indemnify the City for any losses, claims, damages or expenses relating to or based upon any sale, assignment, pledge or transfer of City Funds in violation of this Agreement; and

(r) Developer acknowledges that with respect to City Funds, the City has no obligation to provide any continuing disclosure to the Electronic Municipal Market Access System maintained by the Municipal Securities Rulemaking Board, to any holder of a note relating to City Funds or any other person under Rule 15c2-12 of the Commission promulgated under the Securities Exchange Act of 1934 or otherwise, and shall have no liability with respect thereto.

**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 Developer's receipt of all required building permits and governmental approvals, Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, 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 Developer. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

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8.03 Redevelopment Plan. Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan, which is hereby incorporated by reference into this Agreement.

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

8.05 Bonds. Montrose Clarendon 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; provided, however, that any such amendments shall not have a material adverse effect on Montrose Clarendon or the Project. Montrose Clarendon shall, at Montrose Clarendon'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 Occupancy Covenant. The Project's 36,411 square feet of retail space (consisting of approximately 30,511 square feet in the Residential Facility and approximately 5,900 square feet in the Commercial Facility) shall be 75% occupied at issuance of the Certificate and 70% occupied thereafter for the Monitoring Period.

8.07 Employment Opportunity; Progress Reports. Developer 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. Developer 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). If any such reports indicate a shortfall in compliance, Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which Developer shall correct any shortfall.

8.08 Employment Profile. Montrose Clarendon 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. Developer 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 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, Developer shall provide the City with copies of all such contracts entered into by Developer or the General Contractor to evidence compliance with this Section 8.09.

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

8.11 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, Montrose Clarendon 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 Montrose Clarendon 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 Montrose Clarendon's business, the Property or any other property in the Redevelopment Area.

8.12 Disclosure of Interest. Montrose Clarendon's counsel has no direct or indirect financial ownership interest in Montrose Clarendon, the Property or any other aspect of the Project.

8.13 Financial Statements. Developer shall obtain and provide to DPD Financial Statements for on or before February 1<sup>st</sup> for the Developer's preceding fiscal year during the Monitoring Period. In addition, Developer 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. Developer, 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, Montrose Clarendon 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, Montrose Clarendon 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. Montrose Clarendon 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. Montrose Clarendon has the right, before any delinquency occurs:

(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



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deemed or construed to relieve, modify or extend Montrose Clarendon's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.15); or

(ii) at DPD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD 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 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 Montrose Clarendon's Liabilities. Montrose Clarendon 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 Montrose Clarendon to any other person or entity. Montrose Clarendon shall immediately notify DPD of any and all events or actions which may materially affect Montrose Clarendon'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 Montrose Clarendon'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, Montrose Clarendon shall provide evidence satisfactory to the City of such compliance.

8.18 Recording and Filing. Developer 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. Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, Developer 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. Montrose Clarendon agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Montrose Clarendon, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon Montrose Clarendon 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 of the State other than Cook County, and municipalities other than the City) relating to Montrose Clarendon, the Property or the Project including but not limited to real estate taxes.

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(ii) Right to Contest. Montrose Clarendon 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 Montrose Clarendon's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless Montrose Clarendon has given prior written notice to DPD of Montrose Clarendon's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

(i) Montrose Clarendon shall demonstrate to DPD's satisfaction that legal proceedings instituted by Montrose Clarendon 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) Montrose Clarendon 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) Montrose Clarendon's Failure To Pay Or Discharge Lien. If Montrose Clarendon fails to pay any Governmental Charge or to obtain discharge of the same, Montrose Clarendon 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 Montrose Clarendon 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 Montrose Clarendon. 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 Montrose Clarendon fails to pay any Governmental Charge, the City, in its sole discretion, may require Montrose Clarendon to submit to the City audited Financial Statements at Montrose Clarendon's own expense.

(c) [intentionally omitted]

(d) Notification to the Cook County Assessor of Change in Use and Ownership. Prior to the Closing Date, Developer shall complete a letter of notification, in accordance with 35 ILCS 200/15-20, notifying the Cook County Assessor that there has been a change in use and ownership of the Property. On the Closing Date, Developer shall pay to the Title Company the cost of sending the notification to the Cook County Assessor via certified mail, return receipt requested. After delivery of the notification, Developer shall forward a copy of the return receipt to DPD, with a copy to the City's Corporation Counsel's office.

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8.20 Annual Report(s). (a) Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, Montrose Clarendon shall submit to DPD the Annual Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

(b) Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, Montrose Clarendon shall cause to be submitted to DPD each calendar year an Annual Report of Incremental Taxes not later than February 1<sup>st</sup> of the subsequent calendar year. Failure by Montrose Clarendon to submit the Annual Report of Incremental Taxes before February 15th of a relevant year shall constitute an Event of Default under Section 15.01 hereof, without notice or opportunity to cure pursuant to Section 15.03 hereof. If Montrose Clarendon defaults in submitting the Annual Report of Incremental Taxes in any year, the City may engage its own financial consultant to prepare the report and the cost thereof shall be reimbursed to the City from City Funds to the extent available for payments on the City Note.

8.21 Inspector General. It is the duty of Montrose Clarendon and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of Montrose Clarendon's officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant: (a) to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code and (b) to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. Montrose Clarendon represents that it understands and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

8.22 LEED Certification. The Developer will comply with all requirements of the City of Chicago's Sustainable Development Policy (a copy of which the Developer acknowledges having received from the City) as it pertains to the Project, including 100% green roof and LEED certification.

## 8.23. FOIA and Local Records Act Compliance.

(a) FOIA. Montrose Clarendon acknowledges that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("FOIA"). The FOIA requires the City to produce records (very broadly defined in FOIA) in response to a FOIA request in a very short period of time, unless the records requested are exempt under the FOIA. If Montrose Clarendon receives a request from the City to produce records within the scope of FOIA, then Montrose Clarendon covenants to comply with such request within two business days of the date of such request. Failure by Montrose Clarendon to timely comply with such request shall be an Event of Default.

(b) Exempt Information. Documents that Montrose Clarendon submits to the City under Section 8.21 (Annual Compliance Report) or otherwise during the Term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by Montrose Clarendon to be treated as a trade secret or information that would cause competitive harm, FOIA requires that Montrose Clarendon mark any such documents as "proprietary, privileged or confidential." If Montrose Clarendon marks a document as "proprietary, privileged and confidential", then DPD will evaluate whether such document may be withheld under the FOIA.

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DPD, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

(c) Local Records Act. Montrose Clarendon acknowledges that the City is subject to the Local Records Act, 50 ILCS 205/1 et. seq, as amended (the "Local Records Act"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, Montrose Clarendon covenants to use its best efforts consistently applied to assist the City in its compliance with the Local Records Act

8.24 Affordable Housing Covenant. Through the thirtieth anniversary of the issuance of the Certificate, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

(a) The Residential Facility shall be operated and maintained solely as residential housing (other than the 30,511 square feet on the first two floors).

(b) Twenty of the units in the Residential Facility shall be available for rental to and be occupied solely by one or more families qualifying as Low Income Families (as defined below) upon initial occupancy; in addition, and not by way of limitation, (i) 10 of such 20 units shall be set aside for Low Income Families whose annual income does not exceed 50% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and (ii) the other 10 of such 20 units shall be set aside for Low Income Families whose annual income does not exceed 60% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development.

(c) The 20 affordable units in the Facility shall have monthly rents not in excess of thirty percent (30%) of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income.

(d) As used in this Section 8.24, the following terms has the following meanings:

(i) "Family" shall mean one or more individuals, whether or not related by blood or marriage; and

(ii) "Low Income Families" shall mean Families whose annual income does not exceed eighty percent (80%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition:

(e) The covenants set forth in this Section 8.24 shall run with the land and be binding upon any transferee.

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(f) The City and Montrose Clarendon may enter into a separate agreement to implement the provisions of this Section 8.24.

(g) The unit profile of the Residential Facility is expected to be as follows (provided that the distribution of unit types may change, in which case the distribution of affordable units would change proportionately, subject to DPD's prior written approval):

## Unit Distribution

	# of Units
Studio	120
1 Bedroom	194
2 Bedroom	58
3 Bedroom	1
Townhome	8
Total	381

	# of Units
Studio	
Affordable	7
Market Rate	113
Total	120

	# of Units
1 Bedroom	
Affordable	10
Market Rate	184
Total	194

	# of Units
2 Bedroom	
Affordable	3
Market Rate	55
Total	58

	# of Units
3 Bedroom	
Market Rate	1

	# of Units
Townhome	

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Market Rate	8
Total	8

(h) Pursuant to Section 2-45-110 of the Municipal Code, the Developer shall pay \$5,700,000 to the City for deposit into the Affordable Housing Opportunity Fund prior to the issuance of a building permit for the Project.

## 8.25 [intentionally omitted]

8.26 Compliance with Multi-Project Labor Agreement. Developer shall cause the General Contractor to comply with that certain Settlement Agreement dated November 3, 2011, by and among the City, the Chicago Regional Council of Carpenters, the Metropolitan Pier and Exposition Authority, the Public Building Commission of the City, and the State, because the Project budget is in excess of \$25,000,000, and, therefore, is subject to the provisions of that certain City Multi-Project Labor Agreement (the "MPLA") dated February 9, 2011, by and among the City and the labor organizations comprising the Chicago & Cook County Building & Construction Trades Council. Developer shall cause the General Contractor to comply with the MPLA to the fullest extent legally permissible without violating other requirements applicable to the construction of the Project, including, without limitation, Sections 8.09, 10.02 and 10.03 hereof. At the direction of DPD, affidavits and other supporting documentation shall be required of Developer, General Contractor and the subcontractors to verify or clarify compliance with the MPLA.

8.27 Continuing Information Agreement. The Developer covenants and agrees as follows:

(a) For each tax collection year following the date the Certificate is issued pursuant to Section 7.01 hereof, the Developer shall engage a recognized financial consultant to prepare an annual continuing information report (the "Consultant's Report") that sets forth as of its date the following information:

(i) a description of the Redevelopment Area, including all redevelopment agreements relating to the Redevelopment Area;

(ii) a description of the Project;

(iii) a status update of the Project, including information on construction, occupancy, leasing or sales, as applicable;

(iv) a listing of the top ten taxpayers in the Redevelopment Area; and

(v) for the property within the Redevelopment Area from which incremental taxes will be used to pay the City Note(s), by tax codes or PINs, as applicable, for the last five collection years:

(A) the equalized assessed value;

(B) the initial equalized assessed value;

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- (C) the incremental equalized assessed value;
- (D) the composite tax rates;
- (E) the available incremental taxes;
- (F) the debt service of the City Note(s); and
- (G) the debt service coverage ratio.

(b) The Consultant's Report shall be signed by the consultant and available to the Developer no later than February 1 following each tax collection year. If the Developer fails to obtain the Consultant's report by the date required, DPD may engage its own financial consultant to prepare the report and the cost thereof shall be reimbursed to the City from monies available in the TIF Fund.

(c) Each Consultant's Report shall include in a prominent place the following disclaimer:

*"The City's Office of Budget and Management ("OBM") produces five year District Projection Reports for each TIF district in the City for the purpose of evaluating resources and project balances. This information is used by the OBM to determine how much funding has been committed and how much funding is available for potential projects. The reports and the projections including therein are not audited and do not represent a final accounting of funds. The reports are not prepared for investors or as a basis for making investment decisions with respect to any notes, bonds or other debt obligations of the City that are payable from available incremental taxes. Investors in such obligations are cautioned not to rely on any of the information contained in the District Projection Reports."*

(d) If any Consultant's Report contains projections, the consultant shall consider the publicly available TIF-wide projections from the OBM and provide an explanation as to the discrepancy, if any, between the consultant's projections and those of OBM. In addition, the consultant shall state in the Consultants Report all assumptions used in formulating the projections.

(e) The Developer shall cause the following documents to be disseminated through the Electronic Municipal Market Access ("EMMA") system for municipal securities disclosure maintained by the Municipal Securities Rulemaking Board (the "MSRB") or through any other electronic format or system prescribed by the MSRB for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended:

- (i) Within five (5) days of the issuance of the Certificate:
  - (A) The Redevelopment Agreement, including the specimen of the City Note;
  - (B) The original feasibility study delivered to DPD; and

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(C) On the date of the closing of any third party sale of the City Note or any beneficial interests therein by the Developer: the private placement or limited offering memorandum used by or on behalf of the Developer in connection with the sale.

(ii) By February 15 of each year:

(A) All redevelopment agreements with respect to the Redevelopment Area that have been made publicly available by DPD;

(B) Annual financial statements of the Redevelopment Area that have been made publicly available by DPD; and

(C) The Consultant's Report.

(f) The Developer shall deliver to DPD each of the documents set forth in subparagraph (e) above on the date such documents are disseminated through EMMA.

(g) The Developer shall be responsible to pay or make provision for all costs and expenses relating to Developer's obligations hereunder, including but not limited to the fees and expenses of the Consultant and the costs of filing with EMMA. In addition to and not in limitation of the other provisions of this Agreement, Developer 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.

**8.28 Survival of Covenants.** All warranties, representations, covenants and agreements of Montrose Clarendon contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of Montrose Clarendon'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.



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## SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

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

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer 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.

(c) Each Employer shall comply with all 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. (1992), 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.

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(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. Developer 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 (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, Developer, 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.

Developer may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code 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.

Developer, 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.

Developer, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Developer, the General Contractor and each subcontractor 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 Developer; 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 Developer, the General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

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When work at the Project is completed, in the event that the City has determined that Developer has failed to ensure the fulfillment of the requirement of this 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 Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly 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 Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to Developer pursuant to Section 2-92-250 of the Municipal Code may be withheld by the City pending the Chief Procurement Officer's determination as to whether Developer must surrender damages as provided in this paragraph.

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.

Developer 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. Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that during the 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 (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code (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 H-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, Developer (and any party to whom a contract is let by Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code, as applicable.

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(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code, Developer's MBE/WBE commitment may be achieved in part by Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by Developer utilizing a MBE or a WBE as 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 Developer's MBE/WBE commitment as described in this Section 10.03. In accordance with Section 2-92-730, Municipal Code, Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

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

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

(f) Any reduction or waiver of Developer'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, as applicable.

(g) Prior to the commencement of the Project, Developer shall be required to meet with the City's monitoring staff with regard to Developer'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, Developer 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, Developer 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

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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 Developer is not complying with its obligations under this Section 10.03, shall, upon the delivery of written notice to Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to Developer to halt the Project, (2) withhold any further payment of any City Funds to Developer or the General Contractor, or (3) seek any other remedies against Developer available at law or in equity.

## SECTION 11. ENVIRONMENTAL MATTERS

Montrose Clarendon hereby represents and warrants to the City that Montrose Clarendon has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto and the Redevelopment Plan.

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

## SECTION 12. INSURANCE

Developer must provide and maintain, at Developer'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.

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(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, Developer 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)

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, Developer must provide 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

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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 Developer undertakes any construction, including improvements, betterments, and/or repairs, Developer 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, Developer must cause remediation contractor to provide Contractor Pollution Liability 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 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:

Developer must furnish the City of Chicago, Department of Planning and Development,

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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. Developer 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 Developer is not a waiver by the City of any requirements for Developer to obtain and maintain the specified coverages. Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to 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 Developer and Contractors.

Developer 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 Developer in no way limit Developer'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 Developer 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 Developer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

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

If Developer, 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.



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## SECTION 13. INDEMNIFICATION

13.01 General Indemnity. Montrose Clarendon 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 Indemnitees 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) Montrose Clarendon's failure to comply with any of the terms, covenants and conditions contained within this Agreement, including, be not limited to, Section 8.27; or

(ii) Montrose Clarendon'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, any official statement, limited offering memorandum or private placement memorandum or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by Montrose Clarendon or any Affiliate Montrose Clarendon or any agents, employees, contractors or persons acting under the control or at the request of Montrose Clarendon or any Affiliate of Montrose Clarendon; or

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

provided, however, that Montrose Clarendon 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, Montrose Clarendon 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. Montrose Clarendon 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 Montrose Clarendon'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 Montrose Clarendon's offices for inspection, copying, audit and examination by an authorized representative of the City, at Montrose Clarendon's expense. Montrose Clarendon shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Montrose Clarendon 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 Montrose Clarendon hereunder:

(a) the failure of Montrose Clarendon to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Montrose Clarendon under this Agreement (except Section 8.06 hereof) or any related agreement (but not including the Park Agreement);

(b) the failure of Montrose Clarendon to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Montrose Clarendon under any other agreement (but not including the Park Agreement) with any person or entity if such failure may have a material adverse effect on Montrose Clarendon's business, property, assets, operations or condition, financial or otherwise;

(c) the making or furnishing by Montrose Clarendon to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement (but not including the Park 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 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 Montrose Clarendon or for the liquidation or reorganization of Montrose Clarendon, or alleging that Montrose Clarendon is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Montrose Clarendon's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief

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of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving Montrose Clarendon; 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;

(f) the appointment of a receiver or trustee for Montrose Clarendon, for any substantial part of Montrose Clarendon's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Montrose Clarendon; 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 sixty (60) days after the commencement thereof;

(g) the entry of any judgment or order against Montrose Clarendon which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under the Lender Financing, which default is (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; provided, however, that the City may not terminate this Agreement pursuant to Section 15.02 if the applicable lender complies with this Agreement, including but not limited to Sections 8.02, 15.04 and 16(b) hereof.

(i) the dissolution of Montrose Clarendon or the death of any natural person who owns a material interest in Montrose Clarendon;

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

(k) prior to the issuance of the Certificate, and except as permitted under Section 18.22 below, the sale or transfer of a majority of the ownership interests of Montrose Clarendon without the prior written consent of the City; or

(l) The failure of Montrose Clarendon, or the failure by any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to Montrose Clarendon, to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code; such failure shall render this Agreement voidable or subject to termination, at the option of the Chief Procurement Officer.

For purposes of Sections 15.01(i) and 15.01(j) hereof, a person with a material interest in Montrose Clarendon shall be one owning in excess of ten (10%) of Montrose Clarendon's membership interests.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreements to which the City and Montrose Clarendon are or shall be parties (not including the Park Agreement). The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available

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remedy, including but not limited to damages, injunctive relief or the specific performance of the agreements contained herein.

15.03 Curative Period. In the event Montrose Clarendon shall fail to perform a monetary covenant which Montrose Clarendon is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless Montrose Clarendon has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event Montrose Clarendon shall fail to perform a non-monetary covenant which Montrose Clarendon is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless Montrose Clarendon has failed to cure such default within thirty (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 thirty (30) day period, Montrose Clarendon shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (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 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 lender providing Lender Financing, whose interest is secured by a Permitted Mortgage (the "Construction Lender"), shall have the right (but not the obligation) to cure such default as follows:

(a) if a monetary default exists, the Construction Lender may cause to be cured such monetary default within 30 days after the later of (and the City shall take no action during such 30 day period): (i) the expiration of the cure period, if any, granted under Section 15.03 to Montrose Clarendon with respect to such monetary default; or (ii) receipt by the Construction Lender of notice of default from the City; and

(b) if a non-monetary default exists (except for a Personal Developer Default, as later defined), the Construction Lender may cause to be cured such non-monetary default within 30 days after the later of (and the City shall take no action during such 30 day period): (i) the expiration of the cure period, if any, granted under Section 15.03 to Montrose Clarendon with respect to such non-monetary default; or (ii) receipt by the Construction Lender of notice of default from the City; and

(c) [Intentionally omitted.]

(d) [Intentionally omitted.]

(e)(1) If such non-monetary default would be an Event of Default set forth in Section 15.01(e), (f), (g), (i), (j), (k) or (l) hereof (each such default being a "Personal Developer Default"), the Construction Lender may provide written notice (the "Assumption Notice") to the

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City 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 Construction Lender 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 18.14 hereof of all of Montrose Clarendon's rights, obligations and interests in this Agreement to the Construction Lender 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 of an Assumption Notice from the Construction Lender 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 Montrose Clarendon's rights, obligations and interests in this Agreement (but in no event longer than 60 days without the written consent of the City).

(f) If such Personal Developer Default is not cured by the 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 Section 15.02.

(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 Montrose Clarendon, 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 Construction Lender initiates a foreclosure proceeding and has not agreed to an assignment of Montrose Clarendon's obligations under this Agreement and is continuing to perform Montrose Clarendon's obligations hereunder, or the Construction Lender provides a 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.

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## 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 G 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 Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that 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 Montrose Clarendon as follows:

(a) In the event that a mortgagee or any other party shall succeed to Developer'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 Montrose Clarendon's interest hereunder in accordance with Sections 18.14 and 18.15 hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to Montrose Clarendon 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 Developer'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 Montrose Clarendon's interest hereunder in accordance with Sections 18.14 and 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to Montrose Clarendon for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "Montrose Clarendon" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Montrose Clarendon's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of Montrose Clarendon which accrued prior to the time such party succeeded to the interest of Montrose Clarendon under this Agreement, in which case Montrose Clarendon shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of Montrose Clarendon'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.

(c) Prior to the issuance by the City to Developer 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.

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## 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.

<p>If to the City:</p> <p>City of Chicago          Department of Planning and Development          121 North LaSalle Street, Room 1000          Chicago, Illinois 60602          Attention: Commissioner</p>	<p>If to Montrose Clarendon:</p> <p>Montrose Clarendon Partners LLC          c/o The Harlem Irving Companies, Inc.          4104 North Harlem Avenue          Norridge, Illinois 60706          Attention: Richard D. Filler</p>
<p>With Copies To:</p> <p>City of Chicago          Department of Law          121 North LaSalle Street, Room 600          Chicago, Illinois 60602          Attention: Finance and Economic          Development Division</p>	<p>With Copies To:</p> <p>DLA Piper LLP (US)          203 North LaSalle Street, Suite 1900          Chicago, Illinois 60601-1293          Attention: Paul Shadle          Mariah DiGrino</p>

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. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement the Redevelopment Plan without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Montrose Clarendon (including those set forth in Sections 10.02 and 10.03 hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Montrose Clarendon affecting the Project site, the Project, or both, or increases any time agreed for performance by Montrose Clarendon by more than ninety (90) days.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the

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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 Montrose Clarendon 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 Montrose Clarendon from the City or any successor in interest or on any obligation under the terms of this Agreement.

18.04 Further Assurances. Montrose Clarendon 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 Montrose Clarendon 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 Montrose Clarendon 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 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.

18.09 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.

18.10 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinance(s) shall prevail and control.

18.11 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.



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18.12 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.

18.13 Approval. Wherever this Agreement provides for the approval or consent of the City, DPD or the Commissioner, or any matter is to be to the City's, DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction 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.

18.14 Assignment. Montrose Clarendon may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City; provided that the City hereby consents to Montrose Clarendon's assignment, on a collateral basis, of Montrose Clarendon's rights under this Agreement, including without limitation the right to receive City Funds and the right to receive payments under the City Note, to JP Morgan Chase Bank, N.A., as administrative agent for the lenders providing Lender Financing under this Agreement and/or the Park Agreement. Any successor in interest to Montrose Clarendon 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 8.23 (Survival of Covenants) hereof, for the Term of the Agreement. Montrose Clarendon consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

18.15 Binding Effect. This Agreement shall be binding upon Montrose Clarendon, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of Montrose Clarendon, 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.

18.16 Force Majeure. Neither the City nor Montrose Clarendon 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 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 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.

18.17 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if Montrose Clarendon is required to provide notice under the WARN Act, Montrose Clarendon 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

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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 Montrose Clarendon has locations in the State. Failure by Montrose Clarendon 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.

18.18 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.

18.19 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Montrose Clarendon 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-judgment collection services. Montrose Clarendon also will pay any court costs, in addition to all other sums provided by law.

18.20 Business Relationships. Montrose Clarendon acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (B) that Montrose Clarendon 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" (as defined in Section 2-156-010 of the Municipal Code)(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. Montrose Clarendon 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.

18.21 Restrictions on Transfer of the City Note. The City Note(s) may only be offered, sold, pledged or otherwise transferred in principal amounts of not less than \$100,000 and only to (a) an institutional "accredited investor" within the meaning of rule 501(a) (1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") that delivers to the City an Investor Letter in the form of Exhibit P hereto, or (b) a person (other than a dealer) who the seller reasonably believes is a "qualified institutional buyer" within the meaning of Rule 144A(a)(1) of the Securities Act. Any holder of the City Note(s) is required to notify any purchaser of the City Note(s) of the resale restrictions referred to above. Notwithstanding the forgoing, if any transfer of the City Note(s) is to a dealer meeting the requirements of Section 144A(a)(1)(ii) or (iii), such dealer shall deliver to the City an Investor Letter with the modifications set forth on the Exhibit P. The Developer may, and the City hereby consents, to the Developer's assignment, on a collateral basis, of the City Note and the right to receive payments thereon, to JP Morgan Chase

# UNOFFICIAL COPY

Bank, N.A., as administrative agent for the lenders providing Lender Financing under this Agreement and/or the Park Agreement.

18.22 City Approval of Transfers of the Project. City approval is required for any transfer or ownership of all or any portion of the Project prior to issuance of the Certificate and during the Monitoring Period (which approval shall not be unreasonably withheld) conditional on receipt of evidence from Montrose Clarendon of the new ownership entity's ability to demonstrate the financial capacity together with the experience needed to effectively operate and manage a large residential/retail development and that entity agreeing to assume all surviving responsibilities and covenants applicable to Montrose Clarendon. The foregoing notwithstanding:

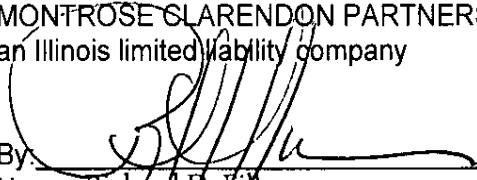
- (a) City approval of the transfer of the fee interest or other ownership interest in the Project shall not be required if (i) the Transferee meets the qualifications as a Qualified Investor under Regulation D of the Securities Act of 1933, and (ii) Montrose Clarendon certifies to City that Montrose Clarendon has in good faith followed customary and commercially reasonable procedures to determine that the Transferee is not a banned or blocked person, entity or nation pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control, and (iii) the Transferee agrees to assume all surviving responsibilities and covenants applicable to Montrose Clarendon under this Agreement.
- (b) Project mortgagees shall have the right to mortgagee remedies including foreclosure and receipt of deeds in lieu of foreclosure.
- (c) City approval shall not be required for (i) a transfer of fee ownership in the Project to an entity wholly owned or controlled by, or wholly owning or controlling, Montrose Clarendon, (ii) a transfer of a direct ownership interest in Montrose Clarendon between entities that are under common ownership or control, (iii) a transfer of direct ownership interests in Montrose Clarendon between entities that own Montrose Clarendon as of the date of Closing, (iii) a transfer of a direct ownership interest in Montrose Clarendon for the purpose of adding or replacing joint venture partners or other parties providing equity financing, where the transfer does not result in a new joint venture partner in Montrose Clarendon or equity source holding more than 25% of a direct ownership interest in Montrose Clarendon.
- (d) City approval shall not be required for transfers of interest in entities that hold an indirect, but not a direct, interest in Montrose Clarendon.
- (e) City approval shall not be required for transfers resulting from a condemnation or threat of condemnation.

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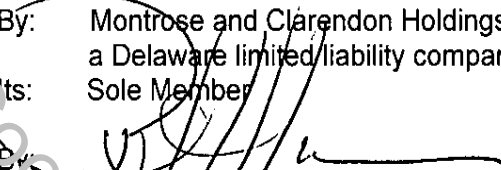
# UNOFFICIAL COPY

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

MONTROSE CLARENDON PARTNERS LLC,  
an Illinois limited liability company

By:   
Name: Richard D. Filler  
Its: Authorized Signatory

MONTROSE AND CLARENDON, LLC,  
a Delaware limited liability company

By: Montrose and Clarendon Holdings, LLC,  
a Delaware limited liability company  
Its: Sole Member  
By:   
Name: Richard D. Filler  
Its: Authorized Signatory

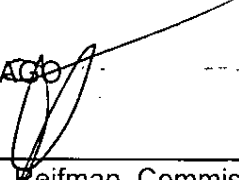
[CITY'S SIGNATURE FOLLOWS]

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

CITY OF CHICAGO

By:

  
David L. Reifman, Commissioner  
Department of Planning and Development

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**

Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Bridget E. Torres, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Richard D. Filler, personally known to me to be the Authorized Signatory of Montrose and Clarendon Holdings, LLC, a Delaware limited liability company and the sole member of Montrose and Clarendon LLC, a Delaware limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed, sealed, and delivered said instrument, pursuant to the authority given to her/him by the sole member of Developer, as her/his free and voluntary act and as the free and voluntary act of Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 31 day of October, 2016.



Bridget E. Torres  
Notary Public

My Commission Expires 3/24/2018

(SEAL)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Bridget E. Torres, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Richard D. Filler, personally known to me to be the Authorized Signatory of Montrose Clarendon Partners, LLC, an Illinois limited liability company ("Partners"), 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 s/he signed, sealed, and delivered said instrument, pursuant to the authority given to her/him by the members of Partners, as her/his free and voluntary act and as the free and voluntary act of Partners, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 31 day of October, 2016.



Bridget E. Torres  
Notary Public

My Commission Expires 3/24/2018

(SEAL)

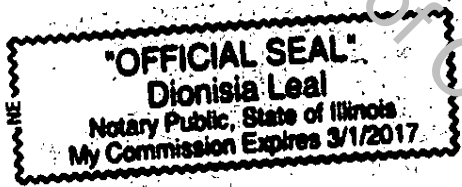
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK )

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

GIVEN under my hand and official seal this 31<sup>st</sup> day of January, 2016.

Dionisia Leal  
Notary Public



My Commission Expires 03-01-2017

PROPERTY OF COOK COUNTY CLERK'S OFFICE

# UNOFFICIAL COPY

EXHIBIT A

REDEVELOPMENT AREA

[SEE ATTACHED]

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

Property of Cook County Clerk's Office



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## Exhibit A

### *Legal Description Of Area. Montrose & Clarendon Redevelopment Area.*

All that part of Sections 16 and 17 in Township 40 North, Range 14 East of the Third Principal Meridian, bounded and described as follows:

beginning at the northeast corner of Lot 1 in A. T. Galt's Sheridan Road Subdivision in the east half of the northeast quarter of Section 17, Township 40 North, Range 14 East of the Third Principal Meridian; thence east along the easterly extension of the north line of said Lot 1 in A. T. Galt's Sheridan Road Subdivision to the point of intersection of the east line of North Clarendon Avenue; thence south along the east line of North Clarendon Avenue to the point of intersection with the easterly extension of the south line of West Sunnyside Avenue being also the easterly extension of the north line of Lot 42 in said A. T. Galt's Sheridan Road Subdivision; thence west along said easterly extension and along the south line of West Sunnyside Avenue and its westerly extension to the east line of Lot 41 in said A. T. Galt's Sheridan Road Subdivision; thence south along the east line of said Lot 41 and its southerly extension and the east line of Lot 47 in said A. T. Galt's Sheridan Road Subdivision to the north line of West Agatite Avenue being also the south line of Lots 47 to 50, inclusive, in said A. T. Galt's Sheridan Road Subdivision; thence west along said north line of West Agatite Avenue to the northerly extension of the east line of Lot 8 in Block 1 of John N. Young's Subdivision of Lot 1 and the vacated half of the street north of and adjacent to said Lot 1 in Superior Court Partition of the South 10 acres of the east half of the northeast quarter of Section 17, Township 40 North, Range 14 East of the Third Principal Meridian; thence south along the northerly and southerly extensions of the east line of said Lot 8 and the east lines of Lots 8 and Lot 17 in Block 1 of said John N. Young's Subdivision and along the southerly extensions thereof to the south line of West Montrose Avenue; thence east along said south line of West Montrose Avenue and its easterly extension to the westerly line of the westerly concrete curb of the south bound lanes of North Lake Shore Drive; thence northwesterly along said westerly line of the westerly concrete curb of the south bound lanes of North Lake Shore Drive and its northwesterly extension to the northerly edge of the northerly concrete walk of West Wilson Drive; thence southwesterly along said northerly edge of the northerly concrete walk of West Wilson Drive and its southwesterly extension to the southeast corner of Lot 25 in Eddy's Subdivision of the south 10 rods of the north 30 rods of the east half of the northeast quarter of Section 17 (except the north 8 feet thereof) together with that part of Section 16 lying east of and adjoining said 10 rods, all in Township 40 North, Range 14 East of the Third Principal Meridian; thence west along the south line of said Lot 25 in Eddy's Subdivision being also the north line of West Wilson Avenue and its westerly extension to the southeast corner of Lot 23 in said Eddy's Subdivision; thence south along the west line of North Clarendon Avenue and its northerly extension to the point of beginning at the northeast corner of said Lot 1 in A. T. Galt's Sheridan Road Subdivision all in the City of Chicago, Cook County, Illinois.

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EXHIBIT B  
PROPERTY

**COOK COUNTY  
RECORDER OF DEEDS**

[See attached legal description]

Sub-Area A

14-17-229-008, 14-17-229-014, 14-17-229-015, 14-17-229-016, 14-17-229-017, 14-17-229-018,  
14-17-229-019

Sub-Area C

14-16-103-006

**COOK COUNTY  
RECORDER OF DEEDS**

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4. The Land referred to in this Policy is located in the County of Cook, State of Illinois, described as follows:

**PARCEL 2:**

LOT 1 AND ALL OF LOTS 2, 3 AND 4 IN LYDSTON' RESUBDIVISION OF LOTS 3 TO 7 IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

LOTS 1 AND 2 (EXCEPT THE NORTH 105 FEET OF THE EAST 85 FEET OF SAID LOTS) IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

THAT PART OF THE NORTH 1/2 OF THE EAST AND WEST 16 FOOT VACATED PUBLIC ALLEY, LYING WEST OF THE WEST LINE OF CLARENDON AVENUE, LYING EAST OF A LINE 18 FEET EAST OF AND PARALLEL TO THE WEST LINE OF LOT 1 AND SAID WEST LINE PRODUCED SOUTH 16 FEET IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 OF BLOCK 1 AFORESAID, SAID VACATED ALLEY LYING SOUTH AND ADJOINING PARCELS 2 AND 3, IN COOK COUNTY, ILLINOIS

**PARCEL 5:**

LOT 18 (EXCEPT THE WEST 18 FEET THEREOF DEDICATED FOR PUBLIC ALLEY, BY INSTRUMENT RECORDED AUGUST 20, 1992 AS DOCUMENT 92618869) AND LOTS 19 AND 20 IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 6:**

LOTS 1 TO 4, BOTH INCLUSIVE, IN THE SUBDIVISION OF LOT 2 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 7:**

THAT PART OF THE SOUTH 1/2 OF THE EAST AND WEST 16 FOOT VACATED PUBLIC ALLEY, LYING WEST OF THE WEST LINE OF CLARENDON AVENUE, LYING EAST OF A LINE 18 FEET EAST OF AND PARALLEL TO THE WEST LINE OF LOT 1 AND SAID WEST LINE PRODUCED SOUTH 16 FEET IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 OF BLOCK 1 AFORESAID, SAID VACATED ALLEY LYING NORTH AND ADJOINING PARCELS 4 AND 5 AFORESAID, IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

**PARCEL 8:**

THE WEST 103 FEET OF THE SOUTH 147 FEET (EXCEPT THE NORTH 14 FEET OF THE EAST 51.6 FEET THEREOF) OF LOT 4 IN SCHOOL TRUSTEE'S SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 9:**

THE NORTH 105 FEET OF THE EAST 85 FEET OF LOTS 1 AND 2 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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**COOK COUNTY  
RECORDER OF DEEDS**

# UNOFFICIAL COPY

## EXHIBIT C

### TIF-FUNDED IMPROVEMENTS

Property assembly costs including acquisition of land, demolition of buildings, site preparation and environmental	\$11,710,000
Construction, renovation, rehabilitation of low and very low-income housing up to 50% of project costs	\$ 1,695,051
TOTAL	\$13,405,051*

\*Notwithstanding the total of TIF-Funded Improvements or the amount of TIF-eligible costs, the assistance to be provided by the City is limited to the amount described in Section 4.03 and shall not exceed \$10,280,000.

Property of Cook County Clerk's Office

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## EXHIBIT G

### 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. Lease Agreement by and between Montrose Clarendon Partners LLC, as landlord, and Treasure Island Foods Montrose Corporation, as tenant, dated October 7, 2016.
3. Lease to be entered into by and between Developer and/or Partners and a tenant, to be determined, with respect to the proposed retail building to be constructed within Subarea C.

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# UNOFFICIAL COPY

## EXHIBIT H-1

### PROJECT BUDGET

Property Assembly	<u>Amount</u>
Land Acquisition	\$10,000,000
Total Land Acquisition	\$10,000,000

Hard Costs	<u>Amount</u>
Demolition/Environmental	\$1,500,000
Construction	\$82,656,319
Hard Cost Contingency	\$4,116,786
Total Hard Costs	\$88,273,105

Soft Costs/Fees	<u>Amount</u>
Architecture and Engineering	\$2,854,000
Legal and Consulting	\$354,000
Insurance	\$197,300
Interest	\$2,988,193
Affordable Trust Payment	\$5,700,000
Marketing	\$500,000
Development Fee	\$4,925,000
Miscellaneous Soft Costs	\$4,097,500
Soft Cost Contingency	\$555,000
Total Soft Costs	\$22,171,003

Total	\$120,444,198
-------	---------------

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

**COOK COUNTY  
RECORDER OF DEEDS**

EXHIBIT H-2  
MBE/WBE BUDGET  
[SEE ATTACHED]

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## COOK COUNTY RECORDER OF DEEDS MBE/WBE BUDGET

Hard Costs	\$41,895,509
Soft Costs/Fees	<u>\$ 3,054,000</u>
MBE/WBE Project Budget	\$44,949,509
MBE Total at 24%	\$ 10,787,882
WBE Total at 4%	\$ 1,797,980

## COOK COUNTY RECORDER OF DEEDS

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT M

### FORM OF NOTE

INVESTMENT IN THIS NOTE INVOLVES A HIGH DEGREE OF RISK. IT IS SUITABLE ONLY FOR PERSONS WHO ARE ABLE TO BEAR THE ECONOMIC RISKS OF THIS INVESTMENT, INCLUDING TOTAL LOSS. NO ASSURANCE CAN BE PROVIDED THAT THE HOLDER OF THIS NOTE WILL NOT LOSE ITS ENTIRE INVESTMENT IN THIS NOTE. SEE "NOTEHOLDER RISKS" ATTACHED TO THIS NOTE.

THIS NOTE IS SUITABLE ONLY FOR PERSONS WHO HAVE NO NEED FOR LIQUIDITY. THIS NOTE MAY ONLY BE TRANSFERRED IN THE MANNER AND SUBJECT TO THE LIMITATIONS PROVIDED IN THE REDEVELOPMENT AGREEMENT.

THE CITY DOES NOT ENDORSE PROJECTIONS OF ANY KIND FROM ANY SOURCE AS TO THE SUFFICIENCY OF ALLOCATED AVAILABLE INCREMENTAL TAXES TO PAY PRINCIPAL OF AND INTEREST ON THIS NOTE. INVESTORS WHO RELY ON SUCH PROJECTIONS DO SO AT THEIR OWN RISK.

PRINCIPAL OF AND INTEREST ON THIS NOTE ARE PAYABLE SOLELY FROM ALLOCATED AVAILABLE INCREMENTAL TAXES ON DEPOSIT IN THE MONTROSE CLARENDON APARTMENTS ACCOUNT, AS DEFINED IN THE HEREINAFTER DEFINED REDEVELOPMENT AGREEMENT. THE HOLDER OF THIS NOTE ACCEPTS THE RISK THAT THE AMOUNT OF ALLOCATED AVAILABLE INCREMENTAL TAXES MAY NOT BE SUFFICIENT TO PAY THE PRINCIPAL OF OR INTEREST ON THIS NOTE.

REGISTERED

NO. R-1

MAXIMUM AMOUNT

\$11,280,000

UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF COOK  
CITY OF CHICAGO

TAX INCREMENT ALLOCATION REVENUE NOTE (MONTROSE-CLARENDON REDEVELOPMENT PROJECT), TAXABLE SERIES B

Registered Owner: Montrose and Clarendon LLC  
Interest Rate: 7% per annum  
Maturity Date: [not later than December 31, 2034]

# UNOFFICIAL COPY

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$11,280,000 and to pay the Registered Owner interest on that amount at the Interest Rate per year specified above from the date of the advance. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

Principal of and interest on this Note, payable solely from the Available Incremental Taxes (as defined in the hereinafter defined Redevelopment Agreement), is due May 1 of each year until the earlier of Maturity or until this Note is paid in full; provided, however, that the obligation to pay principal of and interest on this Note shall be extended to allow for payment of Available Incremental Taxes collected for tax year 2033 (payable in 2034) and prior years. Payments shall first be applied to interest. The principal of and interest on this Note are payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by the Comptroller of the City, as registrar and paying agent (the "Registrar"), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by check or draft of the Registrar, payable in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal and accrued but unpaid interest will be payable solely upon presentation of this Note at the principal office of the Registrar in Chicago, Illinois or as otherwise directed by the City. The Registered Owner of this Note shall note on the Payment Record attached hereto the amount and the date of any payment of the principal of this Note promptly upon receipt of such payment.

This Note is issued by the City in the principal amount of up to \$11,280,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by Montrose Clarendon Partners LLC (the "Project"), which were acquired and constructed in connection with the development of an approximately 30,511 square foot building and a neighboring 5,900 square foot building and parking lot in the Montrose-Clarendon Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State

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of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act") , the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on June 22, 2016 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal of and interest of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and conditions under which this Note is issued and secured. THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND PRINCIPAL OF AND INTEREST ON THIS NOTE ARE PAYABLE SOLELY FROM ALLOCATED AVAILABLE INCREMENTAL TAXES ON DEPOSIT IN THE MCNTROSE CLARENDON APARTMENTS ACCOUNT OF THE TIF FUND (AS DEFINED IN THE REDEVELOPMENT AGREEMENT) AFTER PAYMENT OF ALL OBLIGATIONS HAVING A PRIORITY OVER THIS NOTE, IF ANY. THE HOLDER OF THIS NOTE ACCEPTS THE RISK THAT THE AMOUNT OF ALLOCATED AVAILABLE INCREMENTAL TAXES MAY NOT BE SUFFICIENT TO PAY THE PRINCIPAL OF OR INTEREST ON THIS NOTE. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF OR INTEREST ON THIS NOTE. The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of 100% of the principal amount the ecf being redeemed. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

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This Note is issued in fully registered form in the denomination of its outstanding principal amount. This Note may not be exchanged for a like aggregate principal amount of notes or other denominations.

THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO (I) AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) or (7) UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT") THAT DELIVERS TO THE CITY AN INVESTOR LETTER IN THE FORM OF EXHIBIT P TO THE REDEVELOPMENT AGREEMENT REFERENCED BELOW, OR (II) A PERSON (OTHER THAN A DEALER) WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A(a)(1) UNDER THE SECURITIES ACT. ANY HOLDER OF THIS NOTE IS REQUIRED TO NOTIFY ANY POTENTIAL PURCHASER OF THIS NOTE OF THE RESALE RESTRICTIONS REFERRED TO ABOVE. This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

This Note hereby authorized shall be executed and delivered as the Ordinance and the Redevelopment Agreement provide.

Pursuant to the Montrose Clarendon Apartments Redevelopment Agreement (dated as of \_\_\_\_\_, \_\_\_\_ among the City, the Registered Owner and Montrose Clarendon Partners LLC, an Illinois limited liability company (the "Redevelopment Agreement"), the Registered Owner has agreed to construct the Project and to advance funds for the construction of certain facilities related to the Project on behalf of the City. The cost of such acquisition and construction in the amount of \$11,280,000 shall be deemed to be a disbursement of the proceeds of this Note.

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The City shall be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. Such rights shall survive any transfer of this Note.

The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes and neither the City nor the Registrar shall be affected by any notice to the contrary, unless transferred in accordance with the provisions hereof.

This Note may be transferred only in the manner and subject to the limitations provided in Section 18.21 of the Redevelopment Agreement.

It is hereby certified and recited that all conditions, acts and things required by law to exist, to happen, or to be done or performed precedent to and in the issuance of this Note did exist, have happened, have been done and have been performed in regular and due form and time as required by law; that the issuance of this Note, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation applicable to the City.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Cook County Clerk's Office

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IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized signature of the City Clerk of the City, all as of \_\_\_\_\_.

Mayor

(SEAL)  
Attest:

City Clerk

Property of Cook County Clerk's Office

CERTIFICATE  
OF  
AUTHENTICATION

Registrar  
and Paying Agent  
Comptroller of the  
City of Chicago,  
Cook County, Illinois

This Note is described in the within mentioned Ordinance and is the Tax Increment Allocation Revenue Note (Montrose-Clarendon Redevelopment Project), Taxable Series B, of the City of Chicago, Cook County, Illinois.

Comptroller  
Date:

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[The following "Noteholder Risks" constitutes an integral part of this Note.]

## NOTEHOLDER RISKS

*The purchase of or investment in the Note involves certain risks. Each prospective holder or purchaser of the Note, or any interest therein, should make an independent evaluation of the financial and business risks associated with holding or having an investment interest in the Note. Certain of these risks are set forth below. The following summary is not intended to be complete and does not purport to identify all possible risks that should be considered by prospective holders of the Note or any interests therein. Capitalized terms used herein have the meanings set forth in the Note.*

*All prospective holders of the Note are urged to consult with their financial adviser and legal counsel before acquiring the Note or any interest therein.*

### Loss of Investment

Investment in the Note involves a high degree of risk. It is suitable only for persons who are able to bear the economic risks of the investment, including total loss. No assurance can be provided that prospective holders of the Note will not lose their entire investment in the Note.

### Lack of Liquidity

The Note is suitable only for persons who have no need for liquidity. The transferability of the Note is restricted. The Note may only be transferred in the manner and subject to the limitations provided in the Redevelopment Agreement. Investors in the Note must be prepared to hold the Note until the maturity of the Note.

### Reliance on Projections

The City does not endorse projections of any kind from any source as to the sufficiency of Available Incremental Taxes to pay principal of and interest on the Note. Investors who rely on any such projections do so at their own risk.

The City's Office of Budget and Management ("OBM") produces five-year projection reports for each TIF district in the City for the purpose of evaluating resources and project balances ("District Projection Reports"). This information, which is currently publicly available, is used by the OBM to determine how much funding has been committed and how much funding is available for potential projects. The District Projection Reports and the projections included therein are not audited and do not represent a final accounting of funds. The District Projection Reports are not prepared for investors or as a basis for making investment decisions with respect to any notes, bonds or other debt obligations of the City that are payable from Incremental Taxes, including the Note. Prospective investors in the Note are cautioned not to rely on any of the information contained in the District Projection Reports.

### Limited Obligations

THE NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY PAYABLE SOLELY FROM THE ALLOCATED AVAILABLE INCREMENTAL TAXES AFTER PAYMENT OF ALL OBLIGATIONS HAVING A PRIORITY OVER THE NOTE, IF ANY, AND SHALL BE A VALID



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CLAIM ONLY AGAINST SAID SOURCES. THE NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE NOTEHOLDER HAS NO RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF OR INTEREST ON THE NOTE.

There can be no assurance that Available Incremental Taxes will be sufficient for payment of amounts due and owing on the Note.

## Limited Information

The Note was issued to the Developer under the Redevelopment Agreement as part of a commercial transaction negotiated by the Developer and the City. The Developer engaged a consultant to deliver a projection report to the City in connection with the Project, which included certain information about the Project Area, the Project and historical and projected Available Incremental Taxes. The report contained information as of its date only, and neither the Developer nor any other party have any obligation to update the report as of any subsequent date.

The City is under no continuing obligation to provide to any holder or prospective holder of the Note, or to post to the Electronic Municipal Market Access System of the Municipal Securities Rulemaking Board or any other website, any current or updated information with respect to the Project Area, the Project, the historical and projected Available Incremental Taxes or the Note. The City does not prepare or have readily available any current or updated information about the Project Area, the Project or the Available Incremental Taxes.

## Unavailability of City Funds

The City is not obligated to pay principal of or interest on the Note in any year in which there are inadequate Available Incremental Taxes. The City is obligated to pay the amount of any unpaid principal or accrued interest in any subsequent year only to the extent of the availability of Available Incremental Taxes for those subsequent years. Except as expressly provided in the Note, if, on the maturity date of the Note, any outstanding unpaid principal or interest on the Note exists for any reason, including without limitation the inadequacy of Available Incremental Taxes, such outstanding principal and/or interest will be forgiven in full and the City will have no further obligation to pay such outstanding amount. In such event, there would be no further payments of principal or interest in respect of the Note.

## Risk of Failure to Maintain Levels of Assessed Valuation

There can be no assurance that the equalized assessed value of the Project property will remain the same throughout the term of the Note. Furthermore, the successful petition or application of any owner for the reduction of the assessed value of the Project property may cause the equalized assessed value of the Property to be less than the originally projected equalized assessed value. If any time during the term of the Note the actual equalized assessed value is less than what was projected, the generation of Available Incremental Taxes for payment on the Note is likely to be significantly impaired.

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## Risk of Change in Incremental Taxes

Prospective holders of the Note should carefully consider, among other factors, the risks associated with the ultimate generation of Available Incremental Taxes in the Project Area. These risks include, but are not limited to, the following:

1. Property tax rates are calculated by the Cook County Clerk for numerous funds of a number of taxing districts that tax all or part of the property in the Project Area. A reduction in the tax levies by the affected taxing districts may have an adverse effect on the Available Incremental Taxes.

2. Further changes may be made in the real property tax system by the State of Illinois or Cook County. Such changes could include various property tax rollbacks, abatements, exemptions, changes in the ratio of assessment, or relief measures, limitations on the amount or percent of increase in tax levies by taxing districts, or other measures that would limit the tax levy amount that could be extended to the property within the Project Area and, consequently, the projected Available Incremental Taxes generated. For example, if Illinois adopted practices used in other states, the property tax system could be changed so that schools would be financed from a source other than property taxes. This type of change could have a significant adverse effect upon Available Incremental Taxes.

3. Cook County's methodology and procedures used to assess the value of property may be altered resulting in a potentially reduced or altered valuation in a particular year or succession of years.

FUTURE LEGISLATION, REGULATIONS, GOVERNMENTAL OR JUDICIAL INTERPRETATION OF REGULATIONS OR LEGISLATION OR PRACTICES AND PROCEDURES RELATED TO PROPERTY TAX ASSESSMENT, LEVY, COLLECTIONS OR DISTRIBUTION COULD HAVE A MATERIAL EFFECT ON THE CALCULATION OR AVAILABILITY OF INCREMENTAL TAXES COLLECTED OR DISTRIBUTED AND THEREFORE A MATERIAL EFFECT ON THE AMOUNT OF AVAILABLE INCREMENTAL TAXES FOR PAYMENT OF PRINCIPAL OF AND INTEREST ON THE NOTE.

## Changes in Multiplier and Tax Rate

The equalization factor annually determined by the Illinois Department of Revenue for properties located within Cook County (commonly referred to as the "multiplier") may vary substantially in future years. A decrease in the multiplier would reduce the equalized assessed value of the taxable real property in the Project Area and, therefore, the Available Incremental Taxes available to pay principal of and interest on the Note. The future tax rates of the units of local government levying taxes in the Project Area either individually or on a composite basis, may differ from their historical levels. Any decrease in the composite tax rate of the governmental units would decrease the amount of Available Incremental Taxes available to pay principal of and interest on the Note. Any decrease in the composite tax rate of the governmental units could occur in future years as a result of various factors, including, but not limited to, one or more of the following: (a) reduced governmental costs; (b) constitutional or statutory spending or tax rate limitations; or (c) governmental reorganization or consolidation.

## Economic Risks Affecting Incremental Taxes

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Changing economic circumstances or events in the Project Area may result in reductions in Available Incremental Taxes available to pay principal of and interest on the Note. Relocations of major property owners to sites outside the Project Area or sales of major properties to tax-exempt entities could reduce the assessed valuation of the real properties in the Project Area. Substantial damage to or destruction of improvements within the Project Area could cause a material decline in assessed valuation and impair the ability of the taxpayers in the Project Area to pay their respective portions of real estate taxes. Similarly, there can be no assurance that the improvements in the Project Area will be sufficiently insured under fire and extended coverage insurance policies. Even if such insurance is sufficient, the proceeds thereof will not be assigned as security for the payment of real estate taxes or to secure payment of the Note. In addition, any insurance proceeds may not be sufficient to repair or rebuild said improvements. The restoration of such improvements may be delayed by other factors, or the terms of then-applicable mortgage financing could require the application of insurance proceeds to the reduction of mortgage balances. Any of the foregoing circumstances could result in the assessed valuation of property in the Project Area remaining depressed for an unknown period of time and decrease the amount of Available Incremental Taxes available to pay principal of and interest on the Note.

Results of operation of properties within the Project Area depend, in part, on sales, leases, rental rates and occupancy levels, which may be adversely affected by competition, suitability of the properties located in the Project Area, local unemployment, availability of transportation, neighborhood changes, crime levels in the Project Area, vandalism, rising operating costs and similar factors. Poor operating results of properties within the Project Area may cause delinquencies in the payment of real estate taxes, reduce assessed valuations and increase the risk of foreclosures. Successful petitions by taxpayers to reduce their assessed valuations could adversely affect Available Incremental Taxes available for payment of principal of and interest on the Note.

## Failure to Sell or Lease Property

At the time of Note issuance, the redevelopment plan called for the Developer [to sell/lease to commercial or industrial enterprises/retailers prior to/in connection with] completion of the Project. The slowdown, stoppage or failure of the Developer to complete the Project and to successfully sell/lease the Project could delay or reduce the amount of Available Incremental Taxes generated in the Project Area. Such delay or reduction could lead to a default in payments of the principal of and interest on the Note.

## Reliance on Primary Taxpayers

If one or only a few property owners within the Project Area are responsible for generating a substantial amount of the Incremental Taxes, the generation of Available Incremental Taxes could be significantly adversely affected if such owner or owners and/or their tenants discontinue or curtail their businesses or terminate or default on their leases, and substitutes or replacements cannot be made on a timely basis.

## Force Majeure Conditions

Riots, civil disturbances, vandalism, fires, and natural disasters or other "Acts of God" affecting the conditions and viability of the Project Area may reduce or eliminate the receipt of

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Incremental Taxes which would result in the reduction or elimination of Available Incremental Taxes to pay principal of and interest on the Note.

## Contiguous Project Areas

The Project Area is, or may become, contiguous with other redevelopment areas designated by the City pursuant to the TIF Act. The TIF Act allows the City to expend Incremental Taxes collected from the Project Area which are in excess of the amounts required in each year to pay and secure obligations issued and project costs incurred with respect to the Project Area to pay for costs eligible for payment under the TIF Act which are incurred in such contiguous areas. In the event Incremental Taxes from the Project Area in excess of Available Incremental Taxes, along with the amounts required to (i) pay principal and interest coming due on the Note in any year, and (ii) be deposited in other funds and accounts maintained under the Redevelopment Agreement, are allocated to a contiguous project redevelopment area, such excess Incremental Taxes will not be available to remedy any future failure to pay principal of and interest on the Note.

## Risk of Delay in Payment

The failure of current or future owners of real property in the Project Area to remit property taxes to Cook County when due or the failure of Cook County to timely remit Incremental Taxes to the City could result in insufficient Available Incremental Taxes being available to pay principal of or interest on the Note when due.

## Delays in Exercising Remedies

The enforceability of the Note is subject to applicable bankruptcy laws, equitable principles affecting the enforcement of creditors' rights generally and of liens securing such rights, and the police powers of the State of Illinois and its political subdivisions. Because of delays inherent in obtaining judicial remedies, it should not be assumed that these remedies could be accomplished rapidly.

Remedies available to the Noteholder may be limited by a variety of factors and may be inadequate to assure the timely payment of principal of and interest on the Note, or to preserve the tax-exempt status of the Note. The Note is not subject to acceleration due to payment default. Lack of remedies may entail risks of delay, limitation, or modification of the rights of the Noteholder. Judicial remedies, such as foreclosure and enforcement of covenants, are subject to exercise of judicial discretion.

## Risk of Transferee Becoming a Debtor in Bankruptcy

If a transferee of the Note were to become a debtor under the United States Bankruptcy Code or applicable state laws, a creditor or trustee in bankruptcy of the transferee might argue that the sale of the Note by the transferee constituted a fraudulent conveyance or a pledge of the Note rather than a sale. If such positions were accepted by a court, then delays in principal and interest payments to the Noteholder could occur or reductions in the amounts of such payments could result. Additionally, if the transfer of the Note is re-characterized as a pledge, then a tax lien, governmental lien or other lien created by operation of law on the property of the transferee could have priority over the holder's interest in the Note.

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**COOK COUNTY  
RECORDER OF DEEDS**

Loss of Tax Exemption

Interest on the Note could become includible in gross income for federal income tax purposes retroactive to the date of issuance of the Note as a result of a failure of the City to comply with certain provisions of the Internal Revenue Code of 1986, as amended (the "Code"). An event of taxability does not trigger a mandatory redemption of the Note, and the Note will remain outstanding to maturity or until redeemed.

THE ABOVE IS NOT INTENDED TO BE A COMPREHENSIVE DISCUSSION OF ALL POTENTIAL RISKS ASSOCIATED WITH THE NOTE.

\* \* \* \* \*

Property of Cook County Clerk's Office

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## PRINCIPAL PAYMENT RECORD

DATE OF PAYMENT

PRINCIPAL PAYMENT

PRINCIPAL BALANCE DUE

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**

Property of Cook County Clerk's Office

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(ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_  
the within Note and does hereby irrevocably constitute and appoint  
\_\_\_\_\_ attorney to transfer the said Note on the books kept for  
registration thereof with full power of substitution in the premises.

Dated:

Registered Owner

NOTICE: The signature to this assignment must correspond with the name of the  
Registered Owner as it appears upon the face of the Note in every particular,  
without alteration or enlargement or any change whatever.

Signature Guaranteed:

Notice: Signature(s) must be guaranteed by a member of the New York Stock  
Exchange or a commercial bank or trust company.

Consented to by:

CITY OF CHICAGO  
DEPARTMENT OF PLANNING AND DEVELOPMENT

BY:

ITS:

CITY OF CHICAGO  
DEPARTMENT OF FINANCE

BY:

ITS:

Property of Cook County Clerk's Office

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## CERTIFICATION OF EXPENDITURE

\_\_\_\_\_, 201\_

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
\$11,280,000 Tax Increment Allocation Revenue Note  
(Montrose-Clarendon Redevelopment Project, Taxable Series B)  
(the "Redevelopment Note")

This Certification is submitted to you, Registered Owner of the Redevelopment Note, pursuant to the Ordinance of the City authorizing the execution of the Redevelopment Note adopted by the City Council of the City on June 22, 2016 (the "Ordinance"). All terms used herein shall have the same meaning as when used in the Ordinance.

The City hereby certifies that \$\_\_\_\_\_ is advanced as principal under the Redevelopment Note as of the date hereof. Such amount has been properly incurred, is a proper charge made or to be made in connection with the redevelopment project costs defined in the Ordinance and has not been the basis of any previous principal advance. As of the date hereof, the outstanding principal balance under the Redevelopment Note is \$\_\_\_\_\_, including the amount of this Certificate and less payment made on the Redevelopment Note.

IN WITNESS WHEREOF, the City has caused this Certification to be signed on its behalf as of (Closing Date).

CITY OF CHICAGO

By: \_\_\_\_\_  
Commissioner  
Department of Planning and Development

AUTHENTICATED BY:

REGISTRAR

Property of Cook County Clerk's Office